

No. 12. A *Summary of the Crown Law*
1795
for 50

SUMMARY

OF THE *17.*

Crown-Law,

BY

Way of Abridgment of Ser-
jeant *HAWKINS's*
Pleas of the Crown.

MV32VM

By the same AUTHOR

IN TWO BOOKS.

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SUMMARY

OF THE

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BY

Way of Appointment of Ser-
jeant H. M. W. 28



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A N

ANALYSIS

Of the whole

WORK.

ALL Persons are liable to be punished as criminal Offenders, unless they can excuse themselves, either,

1 In Respect of their Want of Reason,
(B. I. C. I. S. 1. to 6.) or,

2 In respect of their Subjection to the Power of others. B. I. C. I. S. 6, &c.

Offences considered in Relation to the Persons against whom they are committed are either,

1 Such as are more immediately against God, or,

2 Such as are more immediately against Man.

A

Offences

An Analysis of the whole Work.

Offences more immediately against God,
are either by Common Law, or by Statute.

Those by Common Law are either Capital,
or not Capital.

The Capital are,

1 Heresy, B. 1. C. 2.

2 Witchcraft, B. 1. C. 3.

3 Sodomy, B. 1. C. 4.

Those not Capital are,

1 Blasphemies, B. 1. C. 5. S. 1.

2 Scoffing at the Scriptures, B. 1. C. 5.
S. 2.

3 Impostures, B. 1. C. 5. S. 3.

4 Open Lewdness grossly scandalous, B.
1. C. 5. S. 4.

5 Seditious Words against the Established
Church, B. 1. C. 5. S. 5.

Those by Statute are either Offences
against Religion in general, as Profanation
of the Lord's Day, Prophane Swearing, &c.
Drunkenness, reviling of the Lord's Supper,
B. 1. C. 6. or Offences against the Established
Church.

Those against the Established Church are,

1 Such as concern all Persons in general.

2 Such as more immediately relate to
Papists.

3 Such as more immediately regard Pro-
testant Dissenters, B. 1. C. 16.

Such as concern all Persons in general
are either,

1 Against the Common Prayer, (B. 1.
C. 7.) or,

2 In

An Analysis of the whole Work.

- 2 In having an Office, (B. 1. C. 8.) or,
- 3 Teaching School without Conformity to the Church, (B. 1. C. 9.) or,
- 4 In not coming to Church, B. 1. C. 10,

II.

Such as more immediately relate to Papists are.

- 1 Popish Recusancy, B. 1. C. 12.
- 2 Saying or hearing Popish Service, B. 1. C. 13.
- 3 The not making a Declaration against Popery, B. 1. C. 14.
- 4 Promoting or encouraging Popery either.

1 In giving or receiving Popish Education, B. 1. C. 15. S. 1, 2, 3.

2 In professing the Popish Religion, B. 1. C. 15. S. 4 to 12.

3 In Buying or selling Popish Books, B. 1. C. 15. S. 12.

Offences more immediately against Man, are either more immediately against the King, or more immediately against the Subject.

Those more immediately against the King, are either Capital, or not Capital.

The Capital are either,

1 High Treason, or,

2 Felonies.

High Treason is either,

1 Such as is within the 25 E. 3. and other Statutes grounded upon it, or,

A 2

2 Such

An Analysis of the whole Work.

2 Such as depends on subsequent Statutes.

Treason within 25 Ed. 3. either,

1 Immediately concerns the King, his Wife and Children, (B. 1. C. 17. S. 2 to 27.) or,

2 His Office in the Administration of Justice, (B. 1. C. 17. S. 27.) or,

3 His Seal, (B. 1. C. 17. S. 28.) or,

4 His Coin, B. 1. C. 17. S. 29 to 37.

High Treason depending on subsequent Statutes is either,

1 By Favourers of Popery, or,

2 By Opposers of the Protestant Succession, B. 1. C. 17. S. 45.

Treasons by Favourers of Popery are either,

1 By extolling the Pope's, Power, (B. 1. C. 17. S. 37, 38.) or,

2 By putting in Use Popish Bulls, (B. 1. C. 17. S. 39.) or,

3 By perverting others, or being perverted, to Popery, (B. 1. C. 17. S. 40.) or,

4 By receiving Popish Orders or Education in Popish Seminaries, and not submitting (B. 1. C. 17. S. 40 to 45.) or,

5 By refusing a second Tender of the Oaths, B. 1. C. 17. S. 44.

Felonies more immediately against the King, are either,

1 Against the Coin or Bullion, (B. 1. C. 18. S. 1 to 5.) or,

2 Against

An Analysis of the whole Work.

2 Against the King's Council, (B. 1. Cb. 18. S. 5.) or,

3 By imbezilling the King's Armour, (B. 1. C. 18. S. 5.) or,

4 By serving a foreign Prince, (B. 1. C. 18. S. 6.) or,

5 By relieving a Popish Priest B. 1. C. 18. S. 7.

Offences more immediately against the King, not Capital, are either,

1 *Premunires*, or,

2 *Misprisions*.

Premunires are incurred either,

1 By using Papal Bulls, (B. 1. C. 19. S. 12.) or,

2 By derogating from the Common Law Courts, (B. 1. C. 19. S. 3, 4.) or,

3 By appealing to *Rome*, (B. 1. C. 19. S. 5.) or,

4 By exercising the Jurisdiction of a Suffragan without the Appointment of the Diocesan, (B. 1. C. 19. S. 6.) or,

5 By disobeying the King's Letter for a Bishoprick, (B. 1. C. 19. S. 8.) or,

6 By maintaining the Pope's Power, (B. 1. C. 17. S. 37, &c.) or,

7 By bringing in *Agnus Dei*, (B. 1. C. 19. S. 9.) or,

8 By contributing to the Maintenance of a Popish Seminary, (B. 1. C. 19. S. 10.) or,

9 By refusing the Oaths, (B. 1. C. 19. S. 11, &c.) or,

10 By denying the Power of the Legislature to limit the Succession of the Crown, B. 1. C. 19. S. 15.

An Analysis of the whole Work.

Misprisions of this Kind are either Misprisions of Treason. *B. 1. C. 20.* or Offences of a lower Degree, as,

1 Contempts against the King's Courts, (*B. 1. C. 21. B. 2. C. 22. S. 2, &c.*) or,

2 Contempts against his Prerogative, as by disobeying his lawful Commands, &c. (*B. 1. C. 22.*) or,

3 Contempts against his Person or Government, as by Acts or Speeches tending to Sedition, &c. (*B. 1. C. 23.*) or,

4 Contempts against his Title, as by denying it, (*B. 1. C. 24. S. 1.*) or by refusing to take the Oaths required either by Common Law, or Statute, for the Security of the Government, *B. 1. C. 24. S. 2, &c.*

Offences more immediately against the Subject are either Capital, or not Capital.

The Capital are either by Common Law, or by Statute.

Those by the Common Law are either,

1 Against the Life of a Man, or,

2 Against his Goods, or,

3 Against his Habitation, or,

4 Against the due Execution of publick Justice.

Those against the Life of a Man are either,

1 Casual, as not being owing to the Default of any Man, (*B. 1. C. 26.*) or,

2 Homicides, *B. 1. C. 27.*

Homicides are either.

An Analysis of the whole Work.

1 Against a Man's own Life, (B. 1. C. 27.) or,

2 Against the Life of another.

Homicide against the Life of another, is either under the Degree of Felony, or amounts to Felony.

That under the Degree of Felony, is either justifiable, (B. 1. C. 28.) or excusable.

The excusable is either *per infortunium* (B. 1. C. 29. S. 1 to 5.) or *se defendendo*, B. 1. C. 29. S. 5, &c.

Homicide against the Life of another amounting to Felony is either without, or with Malice.

That without Malice is Manslaughter, B. 1. C. 30.

That with Malice is either Murder (B. 1. C. 31.) or Petit Treason, B. 1. C. 32.

Capital Offences at Common Law against the Goods of another, are either,

Grand or Petit Larcenies. And these are either Simple, (B. 1. C. 33.) or mixed.

The mixed are either from a Man's Person, B. 1. C. 34, 35. or from his House, B. 1. C. 36.

Those from the Person on the Sea are called Piracies, B. 1. C. 37.

Capital Offences at Common Law against the Habitation of another, are either,

1 Burglary, (B. 1. C. 38.) or,

2 Arson, B. 1. C. 39.

Capital Offences at Common Law against the due Execution of publick Justice, are either Breaches of Prison (B. 2. C. 18.) or Escapes, (B. 2. C. 19, 20.) or Rescouses, B. 2. C. 21.

An Analysis of the whole Work.

Offences more immediately against the Subject made Capital by Statute, are either,

- 1 Against Women, (and of these there are two Kinds) viz. Rape, (B. 1. C. 41.) and forcible Marriage, (B. 1. C. 42.) or,
- 2 Against the Rights of Marriage, (B. 1. C. 41.) or,
- 3 Against the Members of a Man's Body, (B. 1. C. 44.) or,
- 4 Against Records, (B. 1. C. 45.) or,
- 5 Against Cattle, (B. 1. C. 46.) or,
- 6 By Purveyors, (B. 1. C. 47.) or,
- 7 By Soldiers and Mariners, (B. 1. C. 48.) or,
- 8 By Hunters, (B. 1. C. 49.) or,
- 9 By Forgers of false Deeds, (B. 1. C. 50.) or,
- 10 By Gaolers, (B. 1. C. 51.) or,
- 11 By Transporters of Sheep and Wool, (B. 1. C. 52.) or,
- 12 By Servants, (B. 1. C. 53.) or,
- 13 By *Egyptians*, (B. 1. C. 54.) or,
- 14 By Cutters of Pow-dike, (B. 1. C. 55.) or,
- 15 By Trespassers on the Borders, and Riots, (B. 1. C. 56.) or,
- 16 By Bankrupts, (B. 1. C. 52.) or,
- 17 By Counterfeiters of Bank-Notes, Exchequer - Bills, Stamps, *South-Sea* Bonds, Lottery Orders, &c. B. 1. C. 58.

Offences more immediately against the Subject not Capital, are either Misprisions of Felony, (B. 1. C. 59.) or inferior Offences.

Such

An Analysis of the whole Work.

Such inferior Offences either amount to an actual Disturbance of the Peace, or do not.

For the Prevention of those which amount to such Disturbance, there are two Remedies.

1 Surety for the Peace, B. 1. C. 60.

2 Surety for their good Behaviour. B. 1. C. 61.

Of Offences amounting to such Disturbance, there are two Kinds.

1 Such as may be committed by one or two Persons.

2 Such as require a greater Number.

Of those which may be committed by one or two Persons, there are four Kinds.

1 Assault, B. 1. C. 62. S. 1.

2 Batteries, B. 1. C. 62. S. 2.

3 Affrays, B. 1. C. 63.

4 Forcible Entries and Detainers, B. 1. C. 64.

Of those which require a greater Number, there are three Kinds.

1 Riots, B. 1. C. 65. S. 1.

2 Routs, B. 1. C. 65. S. 8.

3 Unlawful Assemblies, B. 1. C. 65. S. 9.

Inferior Offences not amounting to an actual Disturbance of Peace are either by Officers, or Common Persons.

Of such Offences by Officers there are four Kinds.

1 Neglect or Breach of Duty, B. 1. C. 66.

2 Bribery, B. 1. C. 67.

3 Extortion, B. 1. C. 68.

4 Suf-

An Analysis of the whole Work.

4 Suffering a Prisoner in their Custody to escape, *B. 2. C. 19.*

Such Offences by common Persons are either infamous and grossly scandalous, or of a lower Degree.

Of Offences of the first Kind there are six Species.

1 Perjury, *B. 1. C. 69.*

2 Forgery, *B. 1. C. 70.*

3 Cheats, *B. 1. C. 71.*

4 Conspiracies *B. 1. C. 72.*

5 Libels *B. 1. C. 73.*

6 Keeping of a Bawdy-House, *B. 1. C. 74.*

Those of the lower Degree are either such as more immediately affect the Publick, or such as more immediately respect particular Persons.

Of those that more immediately affect the Publick, there are five Kinds.

1 Common Nufances, *B. 1. C. 75.*

2 Monopolies, *B. 1. C. 79.*

3 Forestalling, Ingrossing, and Regrattling, *B. 1. C. 80.*

4 Barratry, *B. 1. C. 81.*

5 Hindrances of publick Justices, as,

1 By opposing an Arrest, or Escaping from one, (*B. 2. C. 17.*) or,

2 By suffering an Escape, (*B. 2. C. 20.*) or,

3 By rescuing a Prisoner, *B. 2. C. 21.*

The most remarkable Kinds of common Nufances are,

1 Such

An Analysis of the whole Work.

1 Such as relate to Highways, (B. 1. C. 76.)

2 Such as relate to Bridges, B. 1. C. 77.

3 Such as relate to Publick Houses, B. 1. C. 78.

Of those that more immediately affect particular Persons, there are three Kinds.

1 Usury, B. 1. C. 82.

2 Maintenance, of which there are three Species, *viz.* Maintenance in general. (B. 1. C. 83.) Champerty, (B. 1. C. 84.) Embracery, B. 1. C. 85.

3 Buying or Selling a pretended Title, B. 1. C. 86.

The Punishment must be by some Court of criminal Jurisdiction.

All such Courts are of Record and derive their Authority from the Crown, B. 2. C. 1.

The Principal of them are,

1 That of the Lord High Steward, B. 2. C. 2.

2 That of the King's Bench, B. 2. C. 3.

3 That of the Constable and Marshall, B. 2. C. 4.

4 That of the Justices of Oyer and Terminer, B. 2. C. 5.

5 That of the Justices of Gaol-Delivery, B. 2. C. 6.

6 That of the Justices of Assize and Nisi prius, B. 2. C. 7.

7 That of Sessions of the Peace, B. 2. C. 8.

8 That

An Analysis of the whole Work.

8 That of the Coroner, *B. 2. C. 9.*

9 The Sheriffs Torn, *B. 2. C. 10.*

10 The Court-Leet, *B. 2. C. 11.*

The first Thing to be done in order to bring a Criminal to Justice, is to arrest him.

Arrests are either without Process from a Court of Record, or by such Process.

Arrests without such Process are either by private Persons, or by publick Officers.

Such Arrests by private Persons are either,

1 Such as are enjoyned by Law, (*B. 2. C. 12. S. 1 to 5.*) or,

2 Such as are permitted by Law, (*B. 2. C. 12. S. 5. to 9.*) or,

3 Such as are rewarded by Law, *B. 2. C. 12. S. 9.*

Such Arrests by publick Officers, are either,

1 By Watchmen, (*B. 3. C. 13. S. 2. to 5.*) or,

2 By Constables, (*B. 2. C. 13. S. 5. to 9.*) or,

3 By Bailiffs of Towns, (*B. 2. C. 13. S. 9.*) or,

4 By Justices of the Peace, *B. 2. C. 13. S. 10, &c.*

Persons arrested are either to be bailed, (*B. 2. C. 15.*)

Or committed, *B. 2. C. 15.*

Arrest by Process from a Court of Record, are either,

An Analysis of the whole Work

1 On Process awarded on a bare Suggestion, or the Knowledge of the Justices which is generally called an Attachment, and is proper for Contempts to the Court, and other Offences of like Nature, (B. 2. C. 22.) or,

2 On Process awarded on an Appeal, Indictment, or Information, B. 2. C. 27.

An Appeal is either by an Innocent Person, which may either be by Writ, or by Bill, (B. 2. C. 23.) or by an Offender confessing himself Guilty, commonly called an Approver, B. 2. C. 24.

Indictments, (B. 2. C. 25.) are either grounded on the Common Law (B. 2. C. 25. S. 36 to 102.) or on the Statute, B. 2. C. 25. S. 64 to 75.

Informations are either merely at the Suit of the King, (B. 2. C. 26. S. 1 to 13.) or partly at the Suit of the King, and partly at the Suit of the Party, B. 2. C. 26. S. 13, &c.

A Criminal being brought into Court, is to be arraigned, and put upon his Trial, the Manner whereof may be considered,

1 As it relates to all Criminals in general, (B. 2. C. 28.) or,

2 As it particularly relates to Principals and Accessories, B. 2. C. 29.

The Party being arraigned either stands Mute, (B. 2. C. 30.) or confesses, (B. 2. C. 31.) or pleads.

Pleas are either Dilatory, or in Chief.

The

An Analysis of the whole Work.

The Dilatory are either declinatory as Sanctuary, (B. 2. C. 32.) and Clergy, (B. 2. C. 33.) or in Abatement, B. 2. C. 34.

Pleas in chief are either in Bar, or the General Issue.

The Principal Pleas in Bar are,

- 1 That of *Autrefois* acquit, (B. 2. C. 35.)
- 2 That of *Autrefois* attain or convict, B. 2. C. 36.
- 3 That of Pardon, B. 2. C. 37.

The Plea of Not guilty is triable, either by the Country, or by the Peers, (B. 2. C. 44.) or by Battle, B. 2. C. 45.

In order for a Trial by the Country, a Jury must be returned from the proper County, (B. 2. C. 40.) by proper Process, (B. 2. C. 41.) before a proper Court, B. 2. C. 42.

The Jurors being returned into Court, are to be sworn, unless a legal Challenge be taken against him, B. 2. C. 43.

Being sworn, they are to be guided by the Evidence, B. 2. C. 46.

Whereupon they must give some Verdict, either General, or Special, B. 2. C. 47.

Judgments in Criminal Cases are either,

- 1 Such as expressly Sentence the Party to the Punishment proper for his Crime, or,
- 2 Such as are without such express Sentence.

Judg-

An Analysis of the whole Work.

Judgments by such express Sentence are either fixed and stated, and always the same for the same Kind of Crimes, *B. 2. C. 48. S.* or discretionary and variable according to Circumstances, *B. 2. C. 48. S.*

Of Judgments without such express Sentence are of two Kinds.

1 Outlawry, *B. 2. C. 48. S. 15.*

2 Abjuration, *B. 2. C. 48. S. 18.*

The most considerable Consequences of an Attainder, &c. are,

1 The Forfeiture of Lands and Goods, *B. 2. C. 49. S.*

2 The Loss of Dower, *B. 2. C. 49. S.*

3 The Corruption of Blood, *B. 2. C. 49. S.*

Judgments may be avoided either without Writ of Error, *B. 2. C. 50. S.* or by Writ of Error, *B. 2. C. 50.*

The Party condemned is either to be reprieved or executed, *B. 2. C. 51.*

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A
SUMMARY
OF THE
Crown-Law.

BOOK I.

CHAP. I.

Of the Persons who may be Guilty of Criminal Offences.

TO make a Man liable to a Criminal Prosecution, Two Things are required,

1. That he have the Use of Reason.
2. That he be *sui juris*.

Sec. 1. On the first Account the Law indulges Infants under the Age of ² Dis- ² S. 1.
B cretion,

Of Criminal Offences.

cretion, Ideots and Lunaticks; whatever the Nature of the Fact may be, and even tho' against the Person ^b of the King, as it is of late holden; neither ^c will it suffer one who becomes *non compos* after he has committed a capital Offence, to be either arraigned or executed.

^d S. 4.

^e Vid. 12.

Ann. 23.

Sect. 2. But ^d a dangerous Madman may be confined ^e till he recover his Senses: And if it appear doubtful to a Judge at the Trial of a Criminal, whether he be in Truth a Lunatick or not, it may be immediately tried by an Inquest of Office.

^f S. 5.

Sect. 3. Want ^f of Reason shall not screen a Defendant in any Civil Action, from satisfying the actual Damage; neither is voluntary ^g Drunkenness an Excuse in any Case whatsoever.

^g S. 6.

^h S. 7.

Sect. 4. He who procures ^h a Madman to commit a Crime, is himself a principal Offender.

ⁱ S. 8.

Sect. 5. And ⁱ if it appear that an Infant under the Age of Discretion could distinguish between Good and Evil, as if one of Nine or Ten Years of Age kill another, and hide the Body, or himself, &c. he may be convicted and condemned, &c. But the Judge in Prudence will respite the Execution.

^k S. 14.

Sect. 6. Secondly, As to an Offender's being *sui juris*, neither ^k a Son, nor a Servant, nor any other Person, except a Feme Covert, is excused on that Account, as acting by the Command or Coercion of another; but a Feme Covert committing a bare Theft in Company with or by Coercion of her

Huf-

Husband, is not deemed guilty of Felony; neither does she become accessory to a Felony, by receiving her Husband who has been guilty of it, as he does by receiving her. *Sect. 7.* But if she commit a Theft by the bare Command of her Husband; or Treason, Murder, or Robbery, in his Company, or by his Coercion; or keep a Bawdy House with him, she is punishable in the same Manner as if she were sole.

Sect. 8. And generally if she be guilty of any Offence not Capital, she may be indicted, &c. without making the Husband a Party; but if she incur the Forfeiture of a Penal Statute, the Husband must be made Defendant in the Action or Information.

S. 9.
m S. 10. &
B. II. C. 19.
S. 34. 2

S. 11.

S. 12.

S. 13:
infra Ch.
10. S. 18,
24.

CHAP. II.

Of Heresy.

Criminal Offences are either,

- 1 More immediately against God; or,
- 2 More immediately against Man.

Those more immediately against God, are either by Common Law; or by Statute.

Those by Common Law are capital, or not capital.

The capital are of three Kinds,

- 1 Heresy,
- 2 Witchcraft,
- 3 Sodomy,

B 2

Sect.

Sect. 1. It seems difficult, precisely to determine, what Errors shall amount to Heresy, and what not: But the 1 Eliz. which erected the High Commission Court, having restrained it to such as are either determined by Scripture, or by one of the four first General Councils, or by some other Council by express Words of Scripture, or by Parliament, with the Assent of the Convocation. These Rules are at present generally thought the best Directions concerning this Matter.

Sect. 2. It is agreed that the Convocation may and always might declare what Opinions are Heretical, and that a Conviction before them was anciently a good Foundation for the Writ *De Heretico comburendo*; but it hath been doubted whether they can at this Day convene and convict an Heretick.

Sect. 3. A Bishop, but no other Spiritual Judge, may punish a Heretick by Church-Censures; and a Conviction before him was, as some say, anciently a good Foundation for the Writ *De Heretico comburendo*. By 24 H. 8. on the Bishop's Neglect to proceed against an Heretick, the Archbishop may do it.

Sect. 4. But the Temporal Courts cannot punish an Heretick, as such, but only as a Disturber of the publick Peace: Yet such Courts may incidently take Knowledge, whether a Tenet be heretical, or not; as anciently, where the Bishops grounded their Commitment of a Man as an Heretick on 2 H. 4. which impowered them to imprison for Heresy; Or even at this Day, where

where a Bishop pleads to a *Quare Impedit*, S. 8.
that he refused the Clerk for Heresy; in
both which Cases the Temporal Courts will
relieve the Party, unless the particular
Point charged against him, be set forth,
and such Point appear to be heretical. But
regularly the Temporal Courts cannot S. 9.
determine what is Heresy; and therefore
if a Man think himself aggrieved by a Suit
in the Spiritual Court *pro salute anime*, for
Heresy, his most proper Remedy is by Ap-
peal, not Prohibition.

Self. 5. Anciently on Heretickⁱ convict, S. 10.
refusing to abjure, or relapsing after Abju-
ration, might be burnt by Force of the
Writ *De Heretico comburendo*, but he forfeited
neither Lands nor Goods. And by the
Common Law still in Force, an obstinate
Heretick may be imprisoned by Force of S. 11.
the Writ *De excommunicato capiendo*. And by
9 & 10 W. 3. 22. If one educated in, or hav-
ing professed the Christian Religion, shall be con-
victed in any of the Courts of Westminster, &c.
of denying any one of the Persons in the Holy
Trinity to be God, or maintaining that there
are more Gods than One; or of denying the Truth
of the Christian Religion, or the Divine Autho-
rity of Scripture, he shall for the first Offence be
adjudged incapable of any Office; and for the
Second, disabled to sue any Action, &c.

CHAP. III.

Of Witchcraft.

Sect. 1. **I**T seems that anciently *Witchcraft* was punishable either in the *Spiritual Court*, in the same manner as *Heresy*; or in the *Temporal Courts*, in the same manner as other Crimes of an infamous Nature.

Sect. 2. By 1 Jac. 1. 12. ¹⁰**The** only Statute in Force against *Witchcraft*, such as shall use any Invocation or Conjurati^on of any Evil Spirit, (who seem clearly within this Law, tho' no Spirit do appear) And such as shall consult, covenant with, entertain, employ, feed or reward any Evil Spirit to any Intent, (all which Persons are within the Clause, tho' nothing farther be done on such Consultation) And such as shall take up any dead Person's Body, or any Part thereof, to be used in any *Witchcraft* (All which are within this Clause, tho' they do not actually so use it)

Sect. 3. And such as shall exercise any *Witchcraft*, &c. whereby any Person shall be killed, destroyed, consumed, or lamed, in his or her Body, or any part thereof, (who are not within this Branch, unless they actually effect such Mischief) shall suffer as Felons without Clergy, and so shall their Aiders, Counsellors, and Abettors. And such as shall take upon them by *Witchcraft*, &c. to tell where Treasure, or Things lost may be found, or to the intent to provoke to unlawful Love, or whereby any Cattel or Goods shall be destroyed, wasted or impaired,

or to hurt any Person in his or her Body, tho' the same be not effected, shall suffer a Year's Imprisonment, and Pillory for the first Offence, and as Felons without Clergy for the second. And it is said c That those who barely take upon them to do any of these Things, except the destroying, wasting, or impairing of Cattle or Goods, are within this Part of the Statute, but that those who take upon them such destroying, &c. are no way within the Statute, unless they actually effect it. S. 5.

CHAP. IV.

Of Sodomy.

Sodomy comprehends all unnatural, carnal Copulations, whether with Man or Beast, and is at this Day, Felony without Clergy. The Words *Rem habuit venereum, & carnaliter cognovit*, which are necessary in every Indictment for this Offence, cannot be satisfied, without some Proof both of Penetration and Emission; but the least Degree is sufficient, and Emission is *prima facie*, an Evidence of Penetration.

B 4

CHAP.

Of Offences against God.

CH A P. V.

Of Offences against God, not capital at Common Law.

Offences by Common Law not capital more immediately against God are,

1. All Blasphemies against God.
2. All profane Scoffing at Scripture.
3. False Pretences to Commissions from God, plainly appearing to be Impostures.
4. All open Lewdness grossly scandalous.

All which Offences, and others of the like Nature, are punishable by the Temporal Courts, with the most infamous Punishments, as tending to subvert all Religion, which is the Foundation of Government.

5. Seditious Words against the Established Church, which are indictable, as tending to a Breach of the Peace.

CH A P. VI.

Of Offences by Statute against Religion in general.

Offences by Statute more immediately against God, are either such as are against Religion in general, or such as are against the Established Church. Those

Of Offences against Religion

Those against Religion in general are,

Sect. 1. 1. All Profanations of the Lord's Day, as to which it is enacted by 1 Car. 1. That no Person shall on this Day assemble of their own Parishes for any Sports, nor use Bull-baiting or Bear-baiting, Interludes, Common Plays, or other unlawful Exercises or Pastimes in their own Parishes, on pain of 3 s. and 4 d.

Sect. 2. And by 29 Car. 2. 7. No Person above the Age of Fourteen shall do any Work on this Day except it be for Necessary and Charity, and no one shall cry or expose any Goods to Sale (except Milk, which may be sold before Nine in the Morning and after four in the Afternoon) nor use a Boat or Barge, without the Allowance of a Justice of Peace, under pain of 5 s. And no Drover, &c. shall travel, &c. under Pain of 20 s. But by 11 & 12 Gul. 21. forty Watermen may ply on the Thames: And by 9 Anne 2. Hackney Coachmen and Chariomen may work on a Sunday.

Sect. 3. 2. All profane Cursing and Swearing, for which Servants, Day-labourers, Seamen and Soldiers forfeit 1 s. and other Persons 10 s.

Sect. 4. 3. Drunkenness; for which all Persons forfeit 5 s.

Sect. 5. 4. Reviling the Sacrament of the Lord's Supper, which is punishable by Fine, &c.

21 Jac. 10.
6 & 7 Gul.
11.
13 Co. 2. 9.
Article 2.

1 Jac. 1.
5.
1 Ed. 6.
repealed by
1 M. 2.
and re-
vived by 1
Eliz. 1.

CHAP.

C H A P. VII.

Of Offences against the Common-Prayer.

Offences by Statute against the Established Church, are either, such as concern all Persons in general, or such as more immediately relate to Papists, or such as more immediately relate to Protestant Dissenters.

Those which concern all Persons in general, are either against the Common-Prayer, or in taking an Office, or in teaching School without due Conformity to the Church, or in not going to Church.

Sect. 1. And first of Offences against the Common-Prayer, as to which it is enacted by 1 Eliz. 2. Parag. 4. That if any Minister who ought to say it (under which Words Clergymen who have no Cure are included as much as those who have one) shall refuse to use it, in such Place where he should use to minister it, or obstinately use any other Form, or speak any thing in Derogation of it, he shall forfeit one Year's Profit of all his Spiritual Promotions, &c.

Sect. 2. Note, That this Statute no way restrains Spiritual Courts, from proceeding in their own Methods against such Offenders.

Sect. 3. And by 1 Eliz. 2. Par. 6. If any Person shall by open Words speak in Derogation of the Common-Prayer, or by open Fact cause any
Mini-

Minister to say any Common-Prayer in other Form; or by any the said Means let any Minister to say the Common-Prayer, he forfeits one hundred Marks, &c.

CHAP. VIII.

Of Offences in taking an Office without due Conformity to the Church.

Sect. 1. **B**Y 13 C. 2. No Person shall be chosen to any Office or Employment, relating to the Government of any City, Corporation, Borough, or Port-Town, who shall not have received the Sacrament according to the Church of England, within one Year before; and in Default thereof such Election shall be void. St. 2. cap. 1. Par. 10, 11.

Sect. 2. And by 25 Ca. 2. All Officers civil and military (except those of Inheritance) and all who shall have any Fee, &c. by Patent from the King (except such as shall be granted for valuable Consideration, and not relate to any Office, or Place of Trust) and all who shall have any Place of Trust, or Employment in the King's Household, shall take the Oaths and Test the next Term, or Quarter Sessions, and receive the Sacrament within three Months, or shall be disabled to hold the said Offices, and forfeit 500 l. &c.

Sect. 3. Notwithstanding the first of these Statutes be express, That the Election shall be void, and the second, That the Person shall be disabled, &c. Yet it has been much doubted, Whether the Acts of such an Officer

S. 3.

Offences in teaching School

ficer being *de facto*, and without Objection instated in his Office, may not be valid as to Strangers, by Reason of the many great Inconveniences which must unavoidably follow from adhering strictly to a literal Construction of the Statutes.

Sect. 4. It hath been questioned, Whether 25 *Ca. 2.* extend to the Censor of the College of Physicians.

Sect. 5. By 10 *Anne 2.* it was made highly penal, for Persons to be present at any other Place of religious Worship, besides the Church of England, during their Continuance in an Office; but this Statute so far as it relates to this Matter, is repealed by 5 *Geo. 4.*

CHAP. IX.

Of Offences in teaching School without conforming to the Church.

*Chap. 1.
Par. 6 & 7.*

Sect. 1. **B**y 23 *Eliz. 1.* Whoever shall maintain a School-master, who shall not repair to Church, &c. or be allowed by the Ordinary, shall forfeit for every Month 10 *l.* and the School-master shall be disabled to teach Youth, and suffer a Year's Imprisonment.

*Chap. 4.
Par. 9.*

Sect. 1. And by 1 *Geo. 1.* None shall be a School-master, except in the Universities, &c. or in some public or free Grammar-School, or in some such Nobleman's or Gentleman's House, as are not Recusants, or by special Licence from the Arch-

Offences in not coming to Church

Archbishop or Bishop, on Pain that whoso the School-master and his Maintainer shall forfeit

40 s. for each Day, once in what other Statute. And these Statutes are still in Force as to Persons not within the Benefit of the Toleration Act; but as to such Persons it seems to be in a great Measure settled, that they are impliedly repealed by that Act. And in Ann. 7. which obliged School-masters, to subscribe the Declaration concerning the Liturgy, and to have a Licence from the Bishop, is repealed by 5 Geo. 4.

For Popish Schoolmasters in particular, See Ch. 15. Sect. 20.

CHAP. X. Of Offences in not coming to Church.

AS to the Offence of not coming to Church, so far as it relates to all Pious in general, not within the Toleration-Act, I shall consider,

1 How far a Man is punishable for his own Absence.

2 How far for suffering such Absence in others.

As to a Man's own Absence, I shall endeavour to shew,

1 To what Forfeitures he is liable by Reason thereof.

2 To

Omnibus in not coming to Church.

2. To what Prosecutions for such Forfeitures.

3. To what other Inconveniences.

4. By what Means he may be discharged.

Sect. 1. As to the fifth Particular, it is enacted by 1 Eliz. 2. That all Persons inhabiting in any the King's Dominions, having no reasonable Excuse to be absent, shall endeavour to repair to their Parish Church, &c. or, on Let thereof, to some usual Place where Common Prayer, &c. shall be used, upon every Sunday and Holy-day, and then and there orderly abide during the Service, on Pain of Punishment by the Censures of the Church, and of 12 d. for every Offence.

Sect. 2. It hath been holden, that a Suit on this Statute needs not shew that the Party had no reasonable Excuse to be absent, or that he inhabited in the King's Dominions; and that it needs not allege the Offence in the County where the Party was in Truth at the Time, because it is a mere Non-Fesance.

Sect. 3. If a Spiritual Court ground in Proceedings on this Statute, and refuse to allow a reasonable Excuse, it shall be prohibited; but not where it proceeds merely on the Canons of the Church.

Sect. 4. It is said, that a Misbehaviour at Church, or Absence from Morning or Evening Service, is equally punishable with a total Absence.

Chap. 1. Sect. 5. It is enacted by 23 Eliz. 6. That Every Person, above sixteen, who shall not repair to some Church, &c. being thereof convicted, shall forfeit 20 l. for every Month (viz. every 28 Days

Offences in not coming to Church

Days^e); and this dispensation not with the above-mentioned Forfeiture of 12 s. for the Absence of one Sunday: Neither shall it be avoided by the Party's Sicknels, for Part of the Time, if he were a Reculant before and after.

Sec. 6. A Condemnation by *Demerret* or *Nisi* is as much within this Statute as a Conviction by Verdict. And so is the Absence of one who has not been before convicted, as much as that of one who has been before convicted: But a bare Conviction, on which Judgment is never given, is not within the Statute; for the Words, *being thereof convicted*, are no more than the Law would have implied, and therefore operate nothing.

Sec. 7. By 28 Eliz. commonly called 29. Every one convicted of not coming to Church, contrary to these Statutes, shall pay 20 l. for every Month after Conviction till he shall conform.

Sec. 8. And by the same Statute of 28 Eliz. Par. 4. and 5. Fac. 1. Par. 8, 9. All Convictions (*viz.* on Indictments¹) shall be certified into the Exchequer, and the Offender shall pay into the Exchequer in the then next Easter or Michaelmas Term 20 l. for every Month in the Conviction; and in every subsequent Easter or Michaelmas Term 20 l. for every Month subsequent to the Conviction; and if he shall make Default in paying the 20 l. both for every Month in the Conviction (*viz.* being a Conviction whereon either Judgment has been given, or a Default recorded after Proclamation, in such Manner as shall be more fully shewn Section 14) and every Month subsequent, during his Nonconformity, the King shall take, seize, and enjoy all

2. 12.

S. 7.

† S. 10.

2. 12.

S. 9.

Par. 1.

§ 8.

3. 12.

Chap. 6.

Par. 2, 3, 4.

3 Fac. 1.

Ch. 4. Par.

8. See 3

Lev. 333.

That the

said Statute

is properly

28 El. and

not 29.

1 S. 35, 36,

37, 40, 41.

2. 12.

Offences (in not coming to Church)

- S. 12.** he Goods (which include Bonds, &c. taken in the Offender's own Name, or in the Name of others to his Use) and two Parts of his Hereditaments, Leases, and Farms, (viz. of Freehold Land not Copyhold) leaving the third Part only of such Hereditaments, Leases, or Farms to the Offender, notwithstanding any Prior Conveyance made by such Offender with Power of Resignation, or to the Use of himself or his Family. And by 3 Jac. 1. c. 6. the King may refuse the Penalty of 20 l. a Month, though it be tendered, and seize two Parts of the Hereditaments, Leases, and Farms, which then or after shall be or come to the Offender, or to any other to his Use or in Trust for him, &c. And this clears a Doubt, which was conceived on 28 Eliz. Whether a Conveyance by another in Trust for a Recusant, could be avoided by a Seizure, by Force of that Statute, because it speaks only of Conveyances made by the Recusant himself.
- S. 13.** *Sec. 9.* If the King make his Election of Seizing the Offender's Land, by Force of 3 Jac. before he has made Default of Payment, he waives the 20 l. a Month, and the Power of seizing the Goods.
- Sec. 10.* The Statute of 28 Eliz. had no Provision that the Profits of the Lands seized by the King should go in Satisfaction of the 20 l. a Month; but this is expressly provided for by 3 Jac. 1. c. 4. Par. 5.
- S. 15.** *Sec. 11.* It is said, That the King may seize the Offender's Goods, tho' he cannot grant them over without an Inquisition first returned: But that he cannot neither seize nor grant over his Lands without such Inquisition.
- S. 46, 47.**

Offences in not coming to Church.

17

Sect. 12. As to the second Particular, viz. To what Prosecutions an Offender is liable for the Forfeitures above-mentioned, it is enacted by 1 El. 2 and 3. Jac. 1. 4. That the said Forfeiture of 12 d. for the Absence of a Sunday or Holiday, may on the Confession of the Party, or Oath of one Witness, &c. be levied on the Goods of the Offender, &c. by the Warrant of a Justice of Peace to the Church warden of the Parish, where the Party dwells, and employed to the Use of the Poor, &c.

S. 29.

Sect. 13. Also a Man may be indicted before Justices of Oyer, Gaol-Delivery, Assize, or Quarter-Sessions of the Peace, for a Month's Absence from Church, contrary to the Purport of 22 Eliz.

S. 21.

23 Eliz. 1.

Par. 9.

28 Eliz. 6.

Par. 2.

3 Jac. 1. 4.

Par. 1.

Sect. 14. Also upon an Indictment at the Assizes or Gaol-Delivery (under which Words by some Opinions^w the King's Bench is included) or Sessions of the Peace, Proclamation shall be made, that the Offender render himself to the Sheriff before the next Assizes, &c. And if he shall not then make Appearance of Record, upon such Default recorded (which is no way to be salved by an actual personal Appearance not entered of Record) the same shall be a Conviction in Law, as if a Trial by Verdict on the Indictment had been recorded.

" S. 22.

28 Eliz. 6.

Par. 5.

3 Jac. 1. 4.

Par. 7.

w S. 26.

x S. 25.

Sect. 15. But such a Conviction y amounts not to a Judgment, and therefore it is not reversible by Error, neither shall the Forfeitures depending upon it be taken to be within the Exception of a Pardon which excepts Forfeitures converted into Debts by Judgment: But it may be quashed in the Exchequer for Insufficiency, as where the Proclamation doth not pursue the Statute, as if it appoint z that the Offender render

y S. 33.

z S. 14.

C

him

Offences in not coming to Church.

himself at the next Assizes, &c. instead of appointing a Render to the Sheriff, &c.

Sect. 16. Yet *Quære*, Whether the Exchequer or any other Court can quash, or otherwise avoid such Conviction, or any Outlawry or other Proceeding thereon, unless ^a the Party first put in Bail to traverse the Indictment as to the Point of not coming to Church. For by ^b *3 Jac. 1.* ^b No such Indictment nor any Proceeding thereon shall be avoided by Reason of Want of Form, or other Defect whatever, other than by direct Traverse of the Point of not coming to Church.

Sect. 17. However it hath been adjudged, ^c *S. 28.* That the Statute restrains not ^c the Party from pleading collateral Matter as a Pardon, &c. nor even from taking Advantage of a Defect in the Record, if ^d such Defect tend to the King's Prejudice, as the Omision of a *Capiatur*, &c.

Sect. 18. By *35 Eliz. 1.* The King may recover all the said Forfeiture, of *20 l.* for a Month's Absence from Church, by Action or Information in the King's Bench, Common Pleas, or Exchequer. The principal ^e Intent whereof was to give the King a Recovery against the Husband for the Absence of the Wife, which could not be had by Way of Indictment, the only Suit before this Statute. But I do not find it settled, that the King can by Virtue of the Conviction of a Wife seize two Parts of the Lands, &c. which the Husband has in her Right.

Sect. 19. By *23 Eliz. 8.* All Forfeitures limited by that Act shall be divided into three Parts, viz. One to the Queen to her own Use, one to the Queen to the Use of the Poor, &c. the third for him who will sue, &c.

^e Chap. 1.
Par. 11.

^e S. 31.
vide supra
Ch. 1. S. 8.

^f S. 31.

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Offences in not coming to Church.

19

Sect. 20. It hath been argued, ^h That this ^h S. 33.
Clause shall not extend to the Forfeiture of
20 l. a Month for not coming to Church,
but only to the Forfeitures for the other
Offences in the Statute; because in the for-
mer Part of the Statute the Forfeiture of
20 l. a Month is expressly given to the Queen,
whereas the other Forfeitures in the Statute
are not; but it hath been adjudged, That it
shall extend equally to all, because the Li-
mitation of the Forfeiture to the Queen, is
no more than the Law would have im-
plied.

Sect. 21. Tho' the Statute intitle the † In- † S. 34.
former to the Third Part only, yet may
he demand the whole Penalty.

Sect. 22. It seems clearly settled, ⁱ That ⁱ S. 35, 36,
the general Words of the subsequent Sta- 37.
tures, which *prima facie* may seem to con-
fine all Forfeitures for Recusancy to the
Suit of the Crown, do no way lessen the
Force of the Clause which gives a Suit to
the Informer, since 'tis the plain Purport of
all the Statutes against Recusancy to fur-
ther, and not restrain the Punishment
of it.

Sect. 23. Yet it seems ^k that a Suit by the ^k S. 38.
King will abate the subsequent Suit of an In- B. 2. Ch.
former, because a Man shall not be twice pu- 26.
nished for the same Offence: But it is said S. 63.
that no Conviction at the Suit of the King,
whether by Verdict or Proclamation, can
be pleaded to a subsequent Suit by the
King, because he may waive his first Suit
and begin a new one.

Sect. 24. It seems doubtful, ^l Whether the ^l S. 39.
Conviction of a Wife, on an Indictment, *Supra* Ch.
can 1. S. 8.

Offences in not coming to Church.

can be pleaded to an Information against her and her Husband, because the Husband is not a Party to the Indictment, &c.

m S. 47.
3 Jac. 1. 5.
par. 8. vi.
de infra,
Ch. 12. S.
5.
Sect. 25. As to the third Particular, viz. To what other Inconveniencies Offenders of this kind are liable: A recusant Convict shall neither *m* practise Law nor Physick, nor use the Trade of an Apothecary, nor be Judge or Minister of any Court, nor bear any Office in the Army or Fleet, under Pain of 100l. Neither shall he be an Executor, Administrator, or Guardian.

n S. 48.
3 Jac. 1. 5.
Par. 22.
Sect. 26. And *n* Every Person forbearing the Church twelve Months, shall, on such Certificate, as by the Statute in that Case is provided, be bound to the Good Behaviour, till he shall conform.

Sect. 27. As to the fourth Particular, viz. By what Means such Offenders may be discharged of the said Forfeitures, &c. by 21 Eliz. 1. par. 10. If such *o* Offender, (not being before submitted at a former Trial) shall submit and confirm himself at or before his Trial, in such manner as by that Statute is provided, he shall be discharged of all the said Offences. And by 29 Eliz. 6. par. 6. After *p* the Submission, or Death of an Offender, and Satisfaction of all Arrears of 20l. a Month due before Seizure of his Lands, no subsequent Forfeiture or Seizure shall ensue, during his Conformity. But this Statute discharging *q* not the Penalties which by a Prosecution had been converted into Debts, it was enacted by 1 Jac. 1. 4 par. 2. That a Recusant conforming himself shall be discharged of all Penalties which he might otherwise sustain. And consequently *r* he may plead his Conformity to a Suit, either by the Informer or King; and even against the Judge.

Offences in not coming to Church.

21

Judgment may have an *Audita querela* against the Informer: Also he may plead it after a Judgment for K. before Execution awarded; but after Execution hath been awarded for K. or the Profits ¹ of his Land on a Seizure ¹ S. 54. have been actually taken to K's Use, he has no Remedy but by Petition to K.

Sect. 28. I do not find it settled how far ¹ S. 56. an Heir of Land in Fee, is chargeable with the Forfeitures incurred by his Ancestor's Recusancy: But it seems clear, that an Heir in Tail was never chargeable with any such Forfeitures, unless they were so far recovered in the Ancestor's Life, as to amount to Debts by Judgment or Specialty, which it seems questionable, whether Forfeitures accruing from a Conviction by Proclamation do or not.

Sect. 29. If the Heir of a Recusant be a Conformist, he is discharged by 1 Jac. 1. 4. as to all Penalties happening, by reason of his Ancestor's Recusancy, unless two Parts of his Lands were seiz'd by K. in his Ancestor's Life, in which Case they shall continue in K's Hands, till the whole Debt be levied.

CHAP. XI.

Of the Offence of suffering others to be absent from Church.

BY 1 Jac. 1. 4. ² Whoever shall keep in his ² Par. 31, Service, Fee, or Livery, or willingly main- 33, 34. tain, &c. in his House, any Servant, Sojourner, Vide infra Ch. 12. S. 1. or Stranger, (except a Parent, wanting, without Fraud, ²⁰

C 3

Of Popish Recusancy.

Fraud, other Habitation or Maintenance, and except a Ward, &c.) who shall forbear going to Church, &c. for a Month, shall for every such Month forfeit 10 l.

CHAP. XII.

Of Popish Recusancy.

Offences against the Established Church more immediately relating to Papists, come under the following Particulars.

1. Not coming to Church, by reason of Popish Recusancy.
2. Saying or hearing Mass, or other Popish Service.
3. Not making the Declaration against Popery.
4. Promoting or encouraging the Popish Religion.

Sect. 1. And first, Of the Offence of not coming to Church by reason of Popish Recusancy, which not only subjects a Man to the same Punishment in the two foregoing Chapters, to which all others in general not being within the Toleration, are liable for not coming to Church; but also puts him under the following Disabilities, Restraints, and Forfeitures, and other Inconveniencies to which no other Recusants are liable.

Sect. 2. And first, It disables him from bringing any Action; for by 3 *Fac. 1.* ^a *A* Popish Recusant convict shall stand to all Intents
and

^a Ch. 5.
par. 11,
12.

Of Popish Recusancy.

23

and Purposes (except ^b perhaps that of giving Evidence as a Witness, to which even Jews are admitted) disabled as a Person excommunicate, &c. and every Person sued by him may plead the same in Disability, &c. except the Action concern some Hereditament or Lease, which is not to be seized into K's Hands, by Force of some Law concerning Recusancy.

Sect. 3. Such Plea can be pleaded but once ^c to the same Action. It must ^d be pleaded before Imparlance, and conclude with a Demand if the Plaintiff shall be answered. Also it must ^e be expressed that the Recusancy was Popish, (which is sufficiently shewn by alledging that the Party being *papalis recusans*, was indicted and convicted *Secundum formam statuti*;) Also it must ^f shew before what Justices the Conviction was: And either the Record itself, or a Certificate, must be produced.

Sect. 4. 2dly, Such Recusancy disables a Man to present to a Church; but this Matter shall be more fully considered, Ch. 15.

Sect. 5. 3dly, It disables a Recusant, being Convict, to exercise any ^g Publick Office or Charge in the Common-wealth, by himself, or his Deputy; Whereas ^h Recusants who are not Papists are disabled only as to some particular Offices, and not as to the Exercise of any by Deputy, which by Law may be so exercised,

Sect. 6. 4thly, It disables a Wife being such Recusant Convict (the Husband not being so) to be Executrix or Administratrix to her Husband, or to claim any part of his Goods or Chattels, if she forbear coming to Church, &c. for one whole Year before his Death.

C 4

Sect. 7.

^b S. 6.

^e S. 4.

^d S. 2.

^c S. 5.

^f S. 3.

^g S. 8, 9.

³ Jac. 1.

⁵ par. 9.

^h *Supra* Ch. 10. S. 25.

ⁱ S. 10.

³ Jac. 1. 5, par. 19.

¹ S. 11. *Seet. 7. Fifthly, It disables ¹ such Recusant be-*
³ *Ing Convict, and married otherwise than ac-*
 3 *Ja. 1. 5. cording to the Church of England, to have any*
 Par. 13. *Estate as Tenant by the Curtesy, or by way of*
Dower or Jointure, &c.

Also such Recusancy puts the Recusant convict under the following Restraint:

Seet. 8. First, It restrains ^m him under Pain
 of forfeiting his Hereditaments for his Life and his
^m S. 12. *Goods, &c from removing ⁿ above five Miles*
 35 *Eliz. 2. from Home (which Miles shall be computed ^o*
 3 *Ja. 1. 5. by allowing 1760 Yards to each, and not*
 Par. 6, 7. *by strait Lines, but according to the near-*
^o S. 15. *est and most usual Way), unless he be urged*
by Process, &c. or have a Licence from the Privy
Council, &c. or from four Justices of Peace, with
the Assent in writing of the Lieutenant of the
^p S. 14. *County, &c. (who ^p if he be a Justice of Peace,*
cannot both join in the Licence, and also
assent as Lieutenant)

Seet. 9. And such Licence by Justices of
Peace must by the express Words of the Sta-
tute be under their Hands and Seals, and ex-
press some particular Cause (of which Oath must
be made) and Time for which it is given, and
consequently in pleading it, all these Cir-
^q S. 13. *cumstances must ^q appear to have been ob-*
erved. But a Licence from the Privy
Council needs not express any Cause, but
only the Time for which it is given.

Seet. 10. Secondly, It restrains ^r him under
^r S. 16. *the Penalty of 100 l. from coming into the House*
 3 *Ja. 1. 5. where the King or his Heir Apparent shall be,*
 Par. 2. *without a Command from the King; and ^s under*
^s 30 *Ca. 2. the Penalty of 500 l. and many other severe Pe-*
 S. 2. Par. *nalties, from coming advisedly into, or remain-*
 5, 6. *ing in the Presence of the King or Queen; or*
 com-

Of Popish Recusancy.

25

coming into the House where they or any of them reside, unless he take the Oaths the next Term, &c.

Sect. 11. Thirdly, It restrains him from keeping any more Armour or Munition than shall be allowed him by four Justices of Peace at a General or Quarter Sessions, and obliges him to discover all such Armour to such Justices, &c. under pain of forfeiting it, and three Months Imprisonment, &c. And this is since extended to suspected Papists, refusing to make the Declaration against Popery, as more fully appears, Ch. 14. Sect. 4.

Sect. 12. Also it restrains such Recusant indicted or convicted from remaining in London or within ten Miles thereof, ten Days after such Indictment or Conviction, under Pain of 100 l. unless he have his only Dwelling in London, &c. in which Case he must deliver up his Name to the Lord Mayor, &c. And the like Restraint is since extended to reputed Papists, refusing to make the Declaration against Popery: For which see Ch. 14. S. 3.

Also such Recusancy subjects to the following Forfeitures.

Sect. 13. 1st, To the Forfeiture of two Parts of a Jointure or Dower, if a Woman convicted of such Recusancy, being the Wife of a Man not convicted, shall forbear coming to Church, &c. for one whole Year before the Husband's Death.

Sect. 14. 2ly, To the Forfeiture of 20 l. for the first Year, and of 40 l. for the second; and of 60 l. for every other Year, if any such Recusant convicted shall conform, and not receive the Sacrament in his Parish-Church within a Year after.

Sect.

^y S. 21. Sect. 15. 3ly, To the Forfeiture^y of 100 l.
³ Ju. 1. 5. if a Man being such Recusant Convict shall be mar-
 Prr. 13. ried otherwise than according to the Church of
 England to a Woman who is no Inheritor.

^z S. 22. Sect. 16. 4ly, To the Forfeiture^z of 100 l.
³ Ju. 1. 5. if such Recusant cause not his or her Child to be
 Par. 14. baptised by a lawful Minister, within a Month
 after its Birth.

^a S. 23. Sect. 17. 5ly, To the Forfeiture^a of 20 l. if
³ Ju. 1. 5. such Recusant not being excommunicate, shall be
 Par. 15. buried in any other Place than the Church or
 Church-yard, &c.

Such Recusancy is also attended with the
 following Inconveniences.

^b S. 24. Sect. 18. 1st, The ^b House or Lodgings of the
³ Ju. 1. 5. Recusant Convict, may be searched by two Ju-
 Par. 26. stices of Peace, or the chief Officers of Towns
 Corporate, for Popish Books and Reliques, which,
 if found, may be defaced, &c.

^c S. 25. Sect. 19. 2ly, If such Recusant^c being a mar-
⁷ Ju. 1. 6. ried Woman, shall not conform herself, &c. with-
 Par. 28. in three Months after her Conviction, she may
 be committed to Prison, &c. unless the Husband
 will pay 10 l. a Month for her Offence, or else
 the third Part of all his Lands.

^d S. 26. Sect. 20. 3ly, The Husband^d of a Popish Re-
¹ Ju. 1. 4. cusant Convict is disabled to execute any pub-
 Par. 9. lick Office or Charge by himself or his Deputy,
 unless he himself and his Children above the Age

^e Vid supra of nine, abiding with him and his Servants^e
 Ch. 11. in Household, once a Month go to Church, &c.

^f S. 27. Sect. 21. Also^f the House of one whose Wife
³ Ju. 1. 5. is a Popish Recusant convict may be searched for
 Par. 26. Popish Books, &c.

CHAP. XIII.

Of Offences in saying or hearing Mass, or other Popish Service.

Sect. 1. BY 23 Eliz. 1. Par. 4. Whoever shall say or sing Mass, shall forfeit two hundred Marks, and be committed for one Year, &c. And whoever shall willingly hear it, shall forfeit one hundred Marks, and suffer a Year's Imprisonment.

Sect. 2. And by 11 & 12 Wil. 3. 4. Whoever shall apprehend a Popish Bishop, Priest, or Jesuit, and prosecute him to Conviction for exercising any Part of the Function of a Popish Bishop or Priest, shall receive 100 l. from the Sheriff; and every such Bishop, &c. (except being a Foreigner, be be entred in the Secretary's Office, and officiate only in the House of a foreign Minister) shall be adjudged to perpetual Imprisonment.

CHAP.

C H A P. XIV.

Of the Offence of not making a Declaration against Popery.

Sect. 1. **B**Y 30 Car. 2. St. 2. Ch. 2. No Peer shall vote, or make his Proxy, or sit during a Debate in the House of Peers; and no Member in the House of Commons shall vote or sit there during a Debate, after the Speaker is chosen, till he shall take the Oaths of Allegiance and Supremacy, and declare his Belief, that there is no Transubstantiation in the Sacrament; and that the Invocation of the Virgin Mary, &c. and the Sacrifice of the Mass, as now used in the Church of Rome, are Idolatrous, &c. on pain of 500 l. and being adjudged a Popish Recusant Convict, and many other Penalties.

Sect. 2. And by the same Statute Par. 9, 12, 13. Every sworn Servant to K shall take the said Oaths, and make the said Declaration in Chancery the next Term after he shall be so sworn; and if such Person neglecting so to do, shall advisedly come into, or remain in the Presence of K. or Queen, or come into the House where they or any of them reside, he shall suffer all the Penalties in the foregoing Section, unless he shall first have such Licence for that Purpose from six Privy Counsellors, as by the said Statute is appointed, which Licence shall not be for more than thirty Days in any one Year.

Sect. 3. And by 1 W. & M. 9. Every Justice of Peace in London and Westminster, and within ten Miles thereof shall cause to be arrested
and

Offences in not declaring against Popery. 29

and brought before them all reputed Papists, (except Foreigners, being Merchants, or menial Servants to some Ambassadors or publick Agent, and Persons who then used some Trade, &c. in London, &c. or dwelt there within six Months before 13 February 1688. and certified their Names to Sessions before 1 August 1689.) and shall tender the said Declaration to them; and every such Person refusing the same, and afterwards remaining in London, &c. or being certified to the King's Bench or Quarter-Sessions at the next Term or Sessions, as having refused to make the said Declaration, and neglecting to make the same in such Court, shall suffer as a Popish Recusant Convict.

SECT. 4. By 1 W. & M. 15. Any two Justices of Peace may, and ought to tender the said Declaration to any one suspected to be a Papist, and no such Person so required, and not making and subscribing the said Declaration, or not appearing before the said Justices on Notice to him given, or left at his Abode, by one Authorized under the said Justices Hands and Seals, shall keep any Arms, &c. or Horse above the Value of 5 l. in his own Possession, or in the Possession of others to his Use: (other than such necessary Weapons as shall be allowed him by Sessions) And any two Justices of Peace, by Warrant, &c. may authorize to search for such Arms, &c. and to seize them to the King's Use, &c. And those who shall conceal them shall be committed, and forfeit the treble Value; and those who shall discover them so as they may be seized, shall have their full Value, to be awarded by Sessions, &c.

SECT. 5. And by 1 W. & M. 26. Those that refuse to make such Declaration are disabled to present to any Benefice, and so are

^b Vide Stat. pra, Ch. 12. S. 11.

are all who profess the Popish Religion, by 12 *Annæ*, as shall be more fully shewn in the next Chapter.

CHAP. XV.

Of Offences in promoting or encouraging the Popish Religion.

Offences of this Sort are of three Kinds.

1. Giving or receiving Popish Education.

2. Professing the Popish Religion.

3. Buying or selling Popish Book.

Señ. 1. As to the first of these Offences, It
 2 *Par. 6, 7.* is enacted by 1 *Jac. 1.* 4. That if any Subject shall go or send any Person under his Government, beyond Sea, out of the King's Obedience, to the Intent to repair to any Popish College, &c. to be instructed in, or profess the Popish Religion, Every one so sending shall forfeit 100 l. and the Person sent, shall in respect of him or herself only, and not in respect of any of his Heirs or Posterity, be disabled to inherit, purchase, or enjoy any Hereditament or Chattel, &c. whatsoever. And all Estates to the Use of, or on any Trust, mediately or immediately, to or for the Benefit of such Person, shall be void.

Señ. 2. And by 3 *Jac. 1.* 5. *Par. 16.* If the Children of any Subject within this Realm (the said Children, not being Soldiers, Mariners, Merchants, or their Apprentices or Factors) shall go beyond Sea, for any Cause without Licence

from

from the King, &c. They shall take no Benefit by any Gift, Conveyance, Descent, Devise, or otherwise, of any Hereditament, or Chattel, or otherwise, till being of the Age of Eighteen Years, they take the Oath of Obedience, &c. And in the mean time the next of Kin, who shall be no Popish Recusant, shall have the said Hereditaments, &c. and account for the same after such Children shall conform, &c. And whoever shall send such Child over Seas, shall forfeit 100l. which by 11 & 12 W. 3. 4. par. 6. shall go to the Person who shall discover the Offence.

Seet. 3. And by 3 Car. 1. 2. If any Subject shall go, or send any one beyond Sea, out of the King's Obedience, to the Intent to enter into, or reside, &c. in any Priory, Nunnery, College, School, &c. or private Popish Family, and shall be there instructed, &c. in the Popish Religion; or shall send any thing towards the Maintenance of any Person so going or sent, or under the Colour of Charity towards the Relief of any Priory, &c. or Religious House whatsoever, Every such Offender, being Convict, shall be disabled to sue, or to be an Executor, or capable of any Legacy or Deed of Gift, or to bear any Office; and shall forfeit all his Goods, &c. and forfeit all his Hereditaments, &c. during his Life.

Seet. 4. As to the second of the said Offences, viz. That of professing the Popish Religion, it is enacted by 11 & 12 W. 3. 4. That every one educated in, or professing the Popish Religion, who shall not within six Months after the Age of eighteen Years, take the Oaths of Allegiance and Supremacy, and subscribe the Declaration against Popery, in the Chancery or King's Bench, or Quarter Sessions, where such Person shall reside, shall in respect of himself, or herself

Offences in encouraging Popery.

herself only, be disabled to inherit, or take, &c. in Possession, Reversion, or Remainder, any Hereditament, &c. And, during such Person's Life, till he take the said Oaths, &c. his next of Kin being a Protestant, shall enjoy the same without Account, but shall not do wilful Waste, &c. And all Persons professing the Popish Religion are disabled to purchase, &c. And all Estates, &c. out of Lands on any Trust, mediately, or immediately, to their Benefit, are void.

Sect. 5. The Devise of the Residue of Money arising from the Sale of Lands, appointed to be sold for Payment of Debts, &c. hath been adjudged within this Statute.

Sect. 6. And by 12 Ann. 12. Every Papist, or Person professing the Popish Religion, and every Mortgagee, Trustee, or Person any way intrusted by or for such Person, shall be disabled to present to any Benefice, &c. or to grant any Avoidance, &c. and in all such Cases the Universities shall present.

Sect. 7. Also the Ordinary may tender the Declaration against Transubstantiation to any reputed Papist, making a Presentation, &c. and may examine a Presentee on Oath, whether the Person who presented him be the true Patron, or only a Trustee. And the Court wherein a Quare impediat shall be brought, may in like manner examine the Parties, and a Bill in Equity may be brought to discover such secret Trusts, &c.

^b S. 10.

Sect. 8. A Person professing the Popish Religion, seems ^b to continue Patron as to all other Purposes, except presenting, or granting an Avoidance; and therefore his Grant of an Estate in the Advowson it self in Fee, or for Life, or Years, if it be made

bona

Offences in encouraging Popery.

33

bona fide, is good ^c; but if he suffer a Right ^c S. 11.
of presenting, to be *pro hac vice* vested in the
University, by Reason of his professing the
Popish Religion, when the Church became
void, he cannot ^d divest it by a subsequent ^d S. 9.
Conformity.

Sect. 9. If an Advowson or Avoidance be- S. 12.
longing to such Person, be in the King's
Hand, by Reason of any Forfeiture, the
King shall present.

Sect. 10. By 11 & 12 W. 3. 4. Par. 3. If any || || S. 13.
Papist, or Person professing the Popish Religion,
shall be convicted of keeping School, or taking upon
themselves the Education, Government, or Board-
ing of Youth within this Realm, &c. they shall
be adjudged to perpetual Imprisonment.

Sect. 11. And by the same Statute, If any ^c ^e S. 14.
Popish Parent, in order to compel a Protestant Child
to a Change of Religion, shall refuse to allow such
Child a reasonable Maintenance, the Lord Chan-
cellor on Complaint shall make a proper Order
therein.

Sect. 12. As ^f to the third Offence in this ^f S. 15
Kind, viz. that of buying or selling Popish
Books, it is enacted by 3 Ja. 1. 5. Par. 25.
That no one shall bring from beyond Sea, print,
buy, or sell any Popish Primers, Ladies Psalters,
Manuals, Rosaries, &c. in any Language, nor any
other superstitious Books, in English, on Pain of
40 s. for every Book, and the Books to be burnt.

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CHAP.

C H A P. XVI.

Of Offences against the establish'd Church, by Protestant Dissenters.

- ^a viz. by Sect. 1. **A**T this Day, All ^a Dissenters (except Papists, and those who in preaching or writing deny the Doctrine of the Trinity) are exempted from all Penal Laws, relating to Religion, except 25 Car. 2. (which obliges ^b Officers to receive the Sacrament, and to take the Oaths, &c. Test, &c.) and except 30 Car. 2. (which obliges ^c all Members of Parliament and the King's sworn Servants, to make the Declaration against Popery, &c.) provided such Dissenters take the Oaths of Allegiance and Supremacy, and make the Declaration against Popery, and come ^d to some Congregation for religious Worship, in some Place registred either in the Bishop's Court, or at Sessions, the Doors whereof shall neither be locked, barred, nor bolted.
- ^e 1 W. & M. Sect. 2. Also dissenting Teachers are tolerated: 18. Par. 8, if they take the Oaths, &c. at the Sessions where they live, and subscribe the 39 Articles, except those concerning Church-Government and Infant-Baptism: And ^f they may qualify themselves 10 An 2. during a Prosecution on a penal Statute, and being qualified in one County, may officiate in another producing a Certificate, &c.
- ^g 1 W. & M. Sect. 3. Also ^g those who scruple any Oath, 18. Par. 13, have the like Indulgence, if they subscribe such Declaration.

Of High Treason.

35

Declarations against Popery, and of Fidelity to the King, and of Faith in God the Father, Son, and Holy Ghost, and concerning the Scripture, as by the Statute are appointed.

Sect. 4. But^h if any Magistrate shall be knowingly present at any publick Meeting for religious Worship, other than the Church of England, in the peculiar Habit of, or attended with the Insigns belonging to his Office, he shall be disabled to hold such Office; and adjudged incapable to bear any publick Office or Employment whatsoever, in England, Wales, Berwick, Jersey, or Guernsey.

^h 5 Geo. 4.
S. 2.

C H A P. XVII.

Of High Treason.

OF Offences more immediately against Man, some are more immediately against the King, others more immediately against the Subject.

Those more immediately against the King, are capital or not capital.

The Capital are High Treason or Felonies.

Sect. 1. It was doubtful^a before 25 Ed. 3. ^a S. 1, 2. that Offences were high Treasons; for Killing the King's Father, or Brother, Messenger; pleading an Excommunication by the Pope in Disability; refusing to accuse a Man in the King's Court, and

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sum-

Of High Treason.

Seff. 1.
Ch. 1.

summoning him before a foreign Power; and other Crimes of the like Nature, in Diminution of the Royal Dignity, were taken to amount to High Treason. But the Statute of 25 Ed. 3. settled all Treasons, which being reinforced by 1 Mar.^b and all subsequent Statutes repealed, which made any Offences Treason, or Misprision of Treason, no Offence is Treason at this Day, which is not either declared to be such, by 25 E. 3. or made such by some Statute since 1 Mar.

The High Treasons declared^a by 25 Ed. 3. either concern the King, his Wife, or Children; or his Office in the Administration of Justice, or his Seal, or his Coin; which three last are called interpretative Treasons.

Seff. 2. Those concerning the King, his Wife, or Children, are thus expressed: *When a Man doth compass or imagine the Death of our Lord the King, or of my Lady his Queen, or of their eldest Son and Heir; or if a Man do violate the King's Companion, or the King's eldest Daughter unmarried; or the Wife of the King's eldest Son and Heir; or if a Man do levy War against our Lord the King in his Realm, or be adherent to the King's Enemies in his Realm, giving to them Aid and Comfort in the Realm or elsewhere, and thereof be provably attainted by open Deed by the People of their Condition.*

Seff. 3. Under the Words, *When a Man doth compass, &c.* All^c Subjects of either Sex are included, being of the Age of Discretion, and sane Memory; and not only natural^d born Subjects, whose Allegiance can no Way be renounced, or transferred to any foreign

^c S. 4.

^d S. 7.

foreign

foreign Prince; but also Aliens ^e living under the King's Protection, which ties them to a local Ligeance, in Respect whereof they may be indicted that they *contra Dominum Regem* (omitting the Word *naturalem*) & *contra Ligeancia sue debitum*, did compass, &c. But ^f ¹ S. 6. Aliens who invade the Kingdom in a hostile Manner, whether in Time of Peace, or War, and whether by themselves, or with English Traitors, are to be dealt with only by the martial Law.

Señ. 4. The Words, *Compass or imagine the Death*, &c. have been so strictly followed, that when the King has been murdered, the Killing him has been laid ² only as an Overt-¹ S. 8. Act, and the compassing his Death as the Treason. But they do not necessarily require a direct Conspiracy against the King's Life, but are satisfied ^h by such Acts as tend ^h S. 9. to the apparent Peril of it, as shall be more fully shewn *Señ. 19.*

Señ. 5. The Words, *Our Lord the King*, extend to every ⁱ King for the Time being ¹ S. 11. in actual Possession of the Crown; who being the only Person who doth or can protect us by the Administration of the Laws, must be the only Person who has a Right to the Obedience due from that Protection: And even in *Edward the 4th's* Time it was agreed, ^k That Treason against ^k S. 12. *Henry 6.* while he was King, in compassing his Death, was punishable after *Edward 4.* came to the Crown. And ^l that all judicial Acts by *Henry 6.* and all his Pardons of ¹ S. 13. Felony, and Charters of Denization, were valid; but that a Pardon made by *Edward 4.* before he was actually King, was void.

- Sect. 6.* And it is declared by 11 H. 7. Ch. 1. That all Subjects are bound by their Allegiance to serve their Prince and Sovereign Lord for the Time being, in his Wars, &c. against every Rebellion, Power and Might raised against him, &c.
- m S. 17.* *Sect. 7.* It is true^m indeed, that after the Restoration of King Charles 2. it was resolved, That all who acted against, and kept him out of Possession, in Obedience to the Powers then in being, were Traitors; but it was first resolved, That he was King *de Facto* as well as *de Jure* from his Father's Death: And it is apparent, that no other was in Possession of any Sovereign Power known to our Laws,
- S. 18.* *Sect. 8.* However it is certain, That upon the Death of a King in actual Possession, his Heir is a King within the Act before his Coronation; for the King never dies.
- S. 19.* *Sect. 9.* A Titular King, as the Husband of a Queen regnant, is not a King within the Meaning of the Act; but a Queen regnant is, tho' she be not within the strict Letter.
- S. 20.* *Sect. 10.* By 1 W. & M. p. Every Person who shall be reconciled to, or hold Communion with the Church of Rome, or profess the Popish Religion, shall be for ever incapable to inherit, possess, or enjoy the Crown, &c. and in every such Case the People are absolved from their Allegiance.
- S. 21.* *Sect. 11.* The Words, *My Lady his Queen* extend not to a Queen Dowager.
- S. 22.* *Sect. 12.* By the King's Companion is meant his Wife; and it seems agreed that if the Wife of a King or Prince consent to an Adulterer, she also is guilty of High Treason.
- S. 23.* *Sect. 13.* The Words, *their eldest Son and Heir*, include the Son of a Queen regnant, and

and a second Son after the Death of the first; and perhaps also a collateral Heir apparent, especially if declared such by Parliament.

Seft. 14. The Words, *If a Man do levy War against our Lord the King in his Realm*, extend not only to those who hold ^v a Fort ["] S. 24. against the King's Forces, or keep together armed Numbers against his Command; but also to all those who make an Insurrection ^w S. 25. in Order to redress a publick Grievance; as to remove Persons from the King; or to lay Violent Hands on a Privy Counsellor; or to revenge themselves against a Magistrate for having executed his Office; or to bring down the Price of Victuals; or to reform the Law, or Religion; or to pull down all Bawdy-houses; or remove all Inclosures in general, &c.

Seft. 15. And ^x 'tis said, That those who are ^x S. 26. found in a special Verdict to have attended the Ringleaders from the Beginning, or to have acted in the Execution of the intended Violence, shall be adjudged guilty within this Clause, tho' they be not expressly found to have been aiding and assisting, or to have known the Design of the Rising.

Seft. 16. But ^y those who rise on Account ^y S. 25. of a private Grievance, as to pull down a particular Inclosure, intrrenching on their Common, are but Rioters. Also those who joyn Rebels, for Fear of Death, and retire as soon as they dare, seem clearly not within the Statute.

Of High Treason.

² S. 24. *Seft.* 17. A Conspiracy ² to levy War, unless it be against the Person ^a of the King, amounts not to Treason, till it be actually levied; but when it is so levied, the Conspirators are Traitors as much as the Actors.

^a *Vid. infra*

S. 19.

Seft. 18. The Words, *If a Man be adherent to the King's Enemies in his Realm, giving to them Aid or Comfort in his Realm or elsewhere,* extend to any Assistance given to Aliens in open Hostility against the King, as by surrendering the King's Castle to them for Reward, selling them Arms, &c. but not to the bare succouring a Rebel fled into another Realm.

S. 28.

Seft. 19. The Words, *And thereof be provably attainted of open Deed, &c.* make it necessary to allege some Overt Act in every Indictment of these Treasons; and it hath been adjudged, That not only a direct ^b Conspiring of the King's Death, and providing Weapons to effect it, or sending Letters to second it; but many other Acts tending to the apparent Peril of the King's Life may be alledged as Overt-Acts of compassing his Death; as inciting ^c a foreign Prince by Letters to invade the Realm; assembling ^d Men to imprison, or depose the King; or to force him to yield to certain Demands; levying War against the King's ^e Person, or the bare consulting to levy such ^{31.} War; meeting ^f together, and consulting the Means to destroy the King and his Government; assembling ^g with others, and procuring them to attempt the King's Death; printing treasonable Positions, as that the King is accountable to the People; and that they ought to take the Government

^b S. 9, 30.

^c S. 9.

^d S. 9, 30.

^e S. 9, 27.

^f S. 31.

^g S. 31.

ment

Of High Treason.

41

ment into their own Hands; publishing a Book to prove that the King's Government is Antichristian, &c.

Sect. 20. Also ^h it hath been formerly adjudged, That the bare Writing of treasonable Matter may amount to an Overt-Act of compassing the King's Death; but this seems to be generally thought over-severe, unless it be accompanied at least with plain Evidence of an Intent to publish it. S. 32.

Sect. 21. It seems agreed ⁱ That bare Words spoken only in Contempt and Disgrace of the King, as those that charge him with a personal Vice, as Drunkenness, &c. or a personal Defect, as Want of Wisdom, &c. cannot amount to Overt-Acts of compassing his Death. S. 34.

Sect. 22. Yet ^k it was anciently adjudged, That the following Words amount to such Overt-Acts, *If King H. 8. will not take back his Wife, he shall not be King, but shall die.* S. 36.

—— *If the King will arrest me for high Treason, I will stab him* —— *If I knew that Perkin Warbeck was the Son of Edward 4. I would take his Part against H. 7.* And ^l it was holden in the Time of King *James 1.* That to affirm that another has a better Title than the King, is an Overt Act of high Treason. But it hath been since ^m strongly holden, that no Words barely spoken can amount to Overt-Acts of Treason. S. 35.

Sect. 23. But howsoever the Law may stand in Relation to seditious Words, not plainly shewing a present, direct, deliberate Design against the King's Life, there are very cogent Arguments that Words plainly ⁿ shewing such Design, may amount to S. 37, 38,
Overt- 39.

- Covert-Acts of compassing the King's Death; as if a Man shall say maturely and advisedly, *If I meet the King, I will kill him*, or other Words to the same Purpose: For since the compassing or imagining the King's Death is the Treason, why should not Words be good Evidences of what they are the most natural Means of expressing? And surely^o he who by Command or Persuasion induces another to kill, or to attempt to kill the King, is a Traitor; and yet he does no Act but by Words. And^p in those many Cases wherein it is adjudged actionable to charge a Man with having spoken Treason, it is taken for granted, That Words may amount to Treason. To which may be added, that it is certain^q that before 25 Ed. 3. Words might amount to Treason.
- ¶ S. 39.
- ¶ S. 38.
- ¶ S. 39.
- ¶ S. 40. Sect. 24. As to the Argument^r from 3 H. 7. 14. which makes it Felony in the King's Servants to compass or imagine the Death of the King or of any of his Council by Words only; from whence it is inferr'd that such compassing of the King's Death could not be Treason, it may be answered, That this proves as strongly, that compassing the King's Death by any other Means is not Treason, since any such compassing whatsoever seems within this Statute; to which may be added, that the chief View of the Statute was to prevent the compassing the Death of the King's Counsellors: And the Preamble says only, *That there is no Remedy for the compassing the Death of a Lord of the Council, &c. without actual Deed.*

Sec. 25. It is said, ^c That many temporary Statutes make Words Treason, which would have been needless if they were so before: But to this it may be answered, That it was the chief End of those Statutes to deter Men from those factious and seditious Words, which at the Time of the Reformation could not be restrained without the highest Penalties. S. 41.

Sec. 26. As to the Recital ^t in the Preamble of 1 *Mod. v.* which complains that many had then of late suffered shameful Death, for Words only, without other Opinion, Fact, or Deed; whereupon all Statutes since 25 *Ed. 3.* making any Offences Treason, are repealed, &c. From whence it may be strongly argued, That in the Opinion of the Makers of this Statute, no Words can of themselves amount to Overt-Acts of High Treason, perhaps it may be answered, ^w That it is the chief, if not the only Purpose of this Statute to repeal those other Statutes concerning Treason, which had often caused Men to be entrapped by unwary Words, and to reduce all Treasons to the Standard of 25 *Ed. 3.* with which it seems no way inconsistent to allow malitious Words, plainly shewing an Imagination of the King's Death to be a proper Evidence of such Imagination. S. 42.
Sess. 1.
Ch. 1.

Sec. 27. High Treason concerning the King's Officer in the Administration of Justice is thus expressed, *If a Man slay the Chancellor, Treasurer, or King's Justices of the one Bench or the other, Justices in Eyre, or Justices of Assize, and all other Justices assign'd to bear and determine, being in their Places doing their* w S. 43.
Offices,

^x S. 47. *Offices.* But ^x this extends to no other Officers of State, nor to these, when out of the Execution of their Offices; nor ^y to an Attempt to kill them; nor to the actual wounding of them.

^y See the next Chapter.

^z S. 48. *Sect. 28.* High Treason concerning the King's Seal, which is ^z said to have been High Treason at Law, is thus express'd, *And if a Man counterfeits the King's Great, or Privy-Seal.* But this extends not ^{aa} to a bare Intent or compassing to do it: Nor ^{bb} to a fixing of the Great Seal to a Charter without Warrant: Nor ^{cc} to a removing of the true writing out of a Patent, and putting in new Matter: Nor to the taking off the Wax from a true Patent, and fixing to another Writing: Nor [†] to the counterfeiting of the Sign-Manual, or Privy-Signet, which is made High Treason by 1 Mar. 6. But ^{dd} if there be an actual counterfeiting within the Statute, the Aiders and Consenters are equally guilty with the Actors.

^{aa} S. 50.

^{bb} S. 51.

^{cc} S. 52.

^{dd} S. 49.

[†] S. 53.

^{ee} S. 55.

High Treason concerning the King's Coin is either by counterfeiting it, or by bringing in false Money.

Sect. 29. High Treason by counterfeiting the Coin is thus expressed, *If a Man counterfeit the King's Money.* Which Words are said ^{ee} to extend to all who coin Money without the King's Authority, whether they utter it or not; and even to those who having the King's Authority to coin Money, make it of a baser Alloy than they ought; and it is plain ^{ff} that they extend to the Abettors and Receivers of a Counterfeiter.

^{ff} S. 55.
See Book 2. Ch. 29.

Sett. 30. But Clippers are not within this Statute; but by subsequent Statutes, *Whoever shall wash, ^{hh} clip, round, file, impair, ⁱⁱ diminish, falsify, scale, or lighten, for Lucre or Gain, the proper Money of this Realm, or that of other Realms current by Proclamation, are Traitors, and forfeit their Hereditaments for Life, and their Goods; but without Corruption of Blood and Loss of Dower. And ^{kk} whoever shall knowingly make or mend, begin to make or mend, buy, sell, or have in Possession any Mould or Press for Coining; or convey such Instruments out of the King's Mint; or mark on the Edges any Coin current, or counterfeit, or colour, or gild any Coin resembling the current Coin of this kind, or any round Blank of base Metal, &c. are Traitors, but without Corruption, &c. and may be prosecuted at any time within six Months. And such Instruments may be seized by any Person, &c.*

hb 5 Eliz.
11.
ii 18 Eliz.
1.

kk 8 &
9 W. 3. 25.
7 Anna 25.
For the
Reward
of apprehending
such Offenders:
See B. 2.
Ch. 12.

Sett. 31. By the King's Money, such only is said ^{ll} to be meant which is coined in Gold or Silver within the Realm, by his Authority: But by subsequent Statutes, *Those who forge foreign ^{mm} Coin in Gold or Silver current ⁿⁿ by the King's Consent are guilty of High Treason. And those who forge foreign Money, not ^{oo} current, &c. of Misprision of Treason.*

ll S. 54.

mm 1 Mar.
Sess. 2. Ch.
6.
nn By
Hale's Pl.

Sett. 32. The Clause in 25 Ed. 3. concerning the bringing in false Money is thus expressed; *And if a Man bring false Money into this Realm, counterfeit to the Money of England, as the Money called Lushburgh, or other, like to the said Money of England, knowing the Money to be false, to merchandize, or make Payment, in deceit of our said Lord the King and his People.*

Cor. 2. it
must be
made current
by
Proclamation.
oo 14 Eliz.
3.

Sett. 33. It hath been adjudged, ^{pp} That the bringing false Money from Ireland is not.

pp S. 54.

a bringing of it into the Realm within this Statute.

99 S. 69.

Sect. 34. Also it is holden, ⁹⁹ That the bringing false Money into this Realm is not within the Statute, unless he who brings it merchandize with it, or pay it away; but this seems contrary to the plain Import of the Clause, which seems to be satisfied with an Intention to merchandize, &c. However bringing over counterfeit foreign Coin is Treason by 1 and 2 Ph. & Ma. 11.

11 S. 56.
68.

Sect. 35. The bare uttering ¹¹ Money known to be false, is not within this Statute, and at Common Law is only a high Misprision, and not Misprision of Treason. But at this Day it is made Felony in some Cases; as is more fully shewn in the next Chapter, *Sect. 1.* And by an old Statute, a suspicious Person, having false Money found upon him, may be arrested till he find his Warrant.

11 S. 70.
71.

Sect. 36. There is a Clause ¹¹ in the said Statute of 25 Ed. 3, *That if any other Case, supposed Treason, which is not above specified, do happen, the Justices shall tarry till the Cause be declared before the King and his Parliament, &c.*

But the Statute of 1 Mar. 1. which expressly enacts, *That no Offence shall be deemed Treason, but only such as is declared and expressed to be so by 25 Ed. 3.* Having taken no Notice of this Clause, it seems the general Opinion, that at this Day it is of no Force.

The following Offences are made High Treason by Statutes subsequent to 1 Ma. 1.

11 S. 72.
5 Eliz. 1.
par. 2 &
10.

Sect. 37. First, *If any ¹¹ in the King's Dominions shall by Writing, &c. advisedly and wilfully maintain, hold, or stand with, &c. the*

Of High Treason.

47

Jurisdiction of the Bishop of Rome heretofore claimed in this Realm, or by any Speech, open Deed or Act, willingly or advisedly attribute any such Authority to the See of Rome, the first Offence is a Præmunire, the second High Treason, &c.

SECT. 38. He who ^{uu} writes, or prints, and afterwards publishes a Book of this Kind, is clearly guilty within this Statute. And it hath been resolved, That he is in like manner guilty, who having read such Book, does afterwards in Discourse allow it to be good; or who knowing the Effect of such Book written beyond Sea, brings it over and secretly sells it; or who having heard by Report of the Contents of such Book, openly commends it. And it is holden, That he who knowing its Contents secretly conveys it to a Friend, to the Intent to pervert him, is also within the Statute. And that he who having been once condemned for an Offence ^{xx} of this Kind; and being demanded by the Judges whether he be still of the same Opinion, answers that he is, is guilty of High Treason. But it is said that he who having heard of the Contents of such a Book, barely buys and reads it, is guilty of no Offence.

^{uu} S. 73.

^{xx} S. 74.

SECT. 39. 2ly, If any ^{yy} one in the King's Dominions shall obtain from the See of Rome, any Bull or Writing whatsoever, or publish, or put the same in Ure; or take upon him by Colour thereof, to absolve or reconcile any Person, or to grant or promise any Absolution, &c. or shall willingly receive any such Absolution, &c. he is guilty of High Treason, the Accessary after, of a Præ-

^{yy} S. 75.

¹³ Eliz. 2.
Par. 2. 3.
4, 5, 6.

Præmunire; he who discloses not an Offer of such Bulls, &c. of Misprision of Treason.

- ²¹ S. 76. Sect. 40. 3ly, If any ²² one shall pretend to
²³ Eliz. 1. have Power (tho' he do nothing farther as
 par. 2. it is ^a said) or shall put in Practice to withdraw
³ Jac. 1. 4. a Subject from his natural Obedience to the King,
 par. 22. (tho' he pretend no Power at all, as it is
²³. said) or to withdraw one for that Intent, to the
² S. 78. Romish Religion, &c. or to do any overt Act
 to that Intent, or to reconcile one to the See of
 Rome; And if any one shall be willingly with-
 drawn, &c. he is guilty of High Treason. But
^b S. 77. ^b if one reconciled to Rome beyond Sea submit,
³ Jac. 1. 4. &c. within six Days after his Return, he is ex-
 par. 24. cused:

- ^c S. 79. Sect. 41. 4ly, If any ^c Ecclesiastick, born in
²⁷ Eliz. 2. the King's Dominion (which is sufficiently ^d
 par. 3. alledged in an Indictment on the Statute,
^d S. 81. without shewing the Place of his Birth)
 and ordained or professed by Popish Authori-
^e S. 82. ty (which is also sufficiently ^e alledged,
 without shewing whether he was ordained,
 &c. in the Realm, or beyond Sea) shall re-
 main in the King's Dominions, or come from be-
 yond Sea, and not submit, &c. within three
^f S. 83. Days, he is guilty of High Treason. But ^f if
 such Person being in a Ship, in order to go
 to Ireland, be driven by a Storm into Eng-
 land, and immediately prosecuted, and by
 Reason of such Prosecution compelled to
 stay here, he is not guilty within the Sta-
 tute.

Sect. 42. And if a Subject knowing such
 Priest to be within the Realm, shall not discover
 him within twelve Days to some Justice of
 Peace, &c. he shall be fined, &c. And if the
 Justice, &c. to whom such Discovery is made,
 shall

shall not give Information to a Privy Counsellor, &c. within twenty-eight Days, he forfeits two hundred Marks.

Sect. 43. Also if any ^e Subject not being an Ecclesiastick, shall not return from a Popish Seminary within six Months after Proclamation, &c. he is guilty of High-Treason. S. 80.
27 Eliz.
par. 5.

Sect. 44. 5. If any ⁿ one having a Charge, Cure, or Office in the Church, or an Office in an Ecclesiastical Court; or if any one who shall wilfully refuse to observe the Rites of the Church, after Admonition, &c. or that shall say or bear private Mass, shall refuse a second Tender of the Oaths, he is guilty of High Treason, but without Corruption of Blood. See Ch. 19. S. 84.
5 Eliz. 1.
par. 11.
12. 20.

Sect. 45. 6. Whoever shall maliciously, advisedly, and directly, by Writing or Printing declare, maintain and affirm, that any one hath any Right or Title to the Crown, otherwise than according to 1 W. and M. Ch. 2. & 12 W. 3. Ch. 2. or that the Kings of this Realm, by the Authority of Parliament, are not able to make Laws to limit and bind the Crown, and the Descent and Government thereof, shall be guilty of High Treason, and those that maliciously and directly affirm the same by preaching, teaching, or advised Speaking, shall be guilty of a Premunire. Also ^k those who maliciously, advisedly, and directly endeavour to hinder any Person who shall be next in Succession according to those Statutes, are guilty of High Treason. S. 85.
4 Anna 8.
par. 1. 2.
6. Anna 7.
par. 1. 3.

k 1 Anna
17.

C H A P. XVIII.

Of Felonies more immediately against the King.

Felonies more immediately against the King, either relate to the Coin, or Bullion, or King's Council, or Armour, or the Service of a foreign Prince, or Relief of a Popish Priest.

§ S. 1.

§ 8 & 9
W. 3. 25.
par. 6.

Sect. 1. There are many ancient ^a Statutes against the debasing of Coin, which seem obsolete at this Day; but a late Statute ^b makes it Felony to blanch Copper for Sale, or to mix blanch'd Copper with Silver, or knowingly to buy or sell, or offer to Sale blanch'd Copper alone, or mixt with Silver, or knowingly and fraudulently to buy, &c. any Mixture which shall be heavier than Silver, and look, touch, and wear like Standard Gold, but be manifestly worse; or to receive or pay any counterfeit milled Money, &c. at a lower Rate than the same by its Denomination doth import, or was coined or counterfeited for.

§ S. 2.

Ch. 7.
par. 12.

Sect. 2. The Transportation ^c of any Coin or Bullion was prohibited under severe Penalties by many ancient Statutes, but so general ^a a Restraint having been found inconvenient to Trade, all Persons were permitted by ^d 15 Ca. 2. to export any foreign Coin or Bullion without Duty, first making an Entry of it in the Custom-house.

Of Felonies, &c.

51

Sect. 3. But ^e this Licence having been ^e S. 3. much abused, it hath been since enacted,

That none shall cast or make Ingots or Bars in ^f 6 & 7 imitation of Spanish, under Pain of 500 l. And ^{W. 3. 17.}

That none shall transport, &c. any molten Silver, ^{par. 3. 5.}

but only such as shall be marked or stamp'd at Goldsmiths-Hall, &c. And have a Certificate

from the Warden of the Company that Oath has been made by the Owners and one Witness, that

it is lawful Silver, and was never the current Coin of this Realm, nor Clippings thereof, nor

Plate wrought within this Kingdom. &c. And any Custom-house Officer may seize any molten ^{Par. 6.}

Silver put on Board any Vessel without such Mark, &c. And ^h if any Broker, not being a ^b Par. 7.

trading Goldsmith, or Refiner of Silver, shall buy or sell any Bullion or molten Silver, he shall

be imprison'd six Months. And ⁱ if a Doubt shall ⁱ Par. 13. arise whether Bullion shipped to be exported, be En- ^{14.}

lish or foreign, the Proof shall lie on the Owner, &c. And if any one shall enter or ship any Bullion

allowed to be exported, other than in the Name of the true Owner, &c. the Exporter shall forfeit

the same, &c. *Sect. 4.* It ^k was made Felony by 5 H 4. 4. ^k S. 7.

to multiply Gold or Silver, or to use the Art or craft of Multiplication; but this is repealed by

W. & M. 30. *Sect. 5.* By ¹ 3 H. 7. 14. It is Felony for any ¹ S. 8. 9.

servant in the Cheque-Roll of the King's Household, under the State of a Lord, to make ^{Ch. 17. S.}

any Confederacy, &c. To destroy or murder the ^{24.}

King, or any Lord of this Realm, or any other Person sworn to the King's Council. And by

Ann. It is Felony without Clergy for any Person to kill, assault, strike, or wound any Privy Coun-
sellor in the Execution of his Office.

E 2

Sect.

^mS. 12. 13. Sect. 6. By 31. Eliz. 4. It is Felony^m for any one having the Charge or Custody of the King's Armour, &c. or of Victuals for victualling Soldiers or Mariners, to imbezil, &c. the same to the Value of 20 s.

ⁿ Ch 4. Sect. 7. By 3 Jac. 1. ⁿ If any Subject ^o not
par. 18. 19, having before taken the Oath of Obedience, ^p shall
20, 21. go out of the Realm, to serve a foreign Prince or
^o S. 10. 11. State, &c. And if any Gentleman, &c. or any
^p See the Person who has born any Office or Charge in
next Camp or Army, shall go out of the Realm to serve
Chapter. such foreign Prince, &c. without being bound
with two Sureties not to be reconciled to the See of
Rome, &c. he shall be a Felon.

Sect. 8. By 27 Eliz. 2. par. 4. Whoever shall wittingly and willingly receive, relieve, comfort, aid, or maintain any Jesuit or other Popish Priest, &c. being at Liberty or out of hold, knowing him to be such, shall be a Felon without Clergy.

C H A P. XIX. Of Præmunire.

Offences coming under the Notion of Præmunire's, may be reduced to the following Heads.

1. Making Use of Papal Bulls.
2. Derogating from the King's Common-Law Courts.
3. Appealing to Rome.
4. Exercising the Jurisdiction of a Suffragan, without the Appointment of the Bishop of the Diocese.
5. Refusing to elect or consecrate a Person nominated by the King to a Bishoprick.
6. Maintaining the Pope's Power.
7. Bring-

7. Bringing in *Agnus Dei's*.
8. Contributing to the Maintenance of a Popish Seminary.
9. Refusing the Oaths.
10. Denying the Power of the Parliament to settle the Succession of the Crown.

Sect. 1. As to the Offence of making Use of Papal Bulls, it was made highly Penal by several Statutes, ^a in the Reign of *Ed. 3.* ^a S. 12. for any one by a Papal Provision, to disturb any Patron to present to a Benefice, &c. And by 16 Ric. 2. 5. *Whoever shall purchase or pursue, &c. in Rome or elsewhere; or bring within this Realm, or receive, &c. any Translations, Processes, Sentences of Excommunication, Bulls, Instruments, or other Things which touch the King, against his Crown and Dignity, and his Regality or Realm (contrary to the Tenor of that Statute, the chief Purport whereof was to avoid all Papal Provisions) their Notaries and Abettors, &c. shall be out of the King's Protection, and their Tenements and Goods forfeited, and they shall be attached by their Bodies. And* ^r *by 2 H. 4. 3 & 4. whoever shall purchase from Rome a Provision of Exemption from ordinary Obedience, or put in Excommunication Bulls purchased by those of the Order of Cisterciaux to be discharged of Tithes: And by 23 & 28* [†] *H. 8. Whoever shall sue for, or execute any Licence, Dispensation, or Faculty from Rome; or use, alledge, or plead the same in any Court, unless they were confirmed by that Statute, or afterwards by the King, shall incur the like Penalty. Yet it seems that the alledging an ancient Bull by way of Inducement*

^r See also
6 H. 4. 1.
7. H. 4. 8.
9. H. 4. 8.
3. H. 5. 4.

^{*} Ch. 21.
par. 22.
[†] Par. 16.

² Lev.

E 3

ment 251.

ment of another Matter, without claiming any Thing from the Bull, is not within the Statute.

^r S. 13.

Sect. 2. And it is still ^r in the Election of the Crown, either to proceed on these Old Statutes against the Purchasers of such Bulls or on 13 *Eliz.* which ^r makes them guilty of High Treason, &c.

^r *Vid supra*

Ch 17. S.

39.

Sect. 3. 2dly, As to the Offence of derogating from the King's Common Law Courts, some Instances whereof are said to have been High Treason at Common Law, It is enacted by 27 *Ed. 3.* 1 & 38 *Ed. 3.* of Provisors, That if any Subject draw any out of the Realm in Plea, whereof the Consuance pertains to the King's Courts, or of Things whereof Judgments be given in the King's Courts, or sue in any other Court to defeat or impeach the Judgments given in the King's Courts, he shall be warned to appear, &c. and if he appear not, he and his Proctors, &c. shall be put out of the King's Protection, &c. And the like is enacted by 16 *R. 2.* 5. set forth more at large S. 1. as to those who purchase in Rome or elsewhere any Processes, &c. which touch the King, &c.

^r S. 16.

Sect. 4. Commissioners ^u of Sewers summoning one before them who has got a Judgment at Law, and imprisoning him till he release it, have been adjudged guilty within these Statutes. Also Suits in the Admiralty, or Ecclesiastical Courts within the Realm, for Matters which, upon the Face of the Libel itself, appear to belong only to the Cognizance of the Temporal Courts, are said ^{*} to be within 16 *Rich. 2.* by Force of the Words, or elsewhere. And it hath

^{*} S. 18. 19.

^y S. 17.

been formerly ^y holden, That even Suits in

a Court of Equity to relieve against a Judgment at Law, are within the Danger of these Statutes, especially if they tend to controvert the very Point determined at Law, or to relieve in a Matter relievable at Law.

Sect. 5. 3dly, Appeals to Rome are made Præmunire's, by 24 H. 8. 12. & 25 H. 8. 19. By which it is enacted, That all such Appeals as formerly were made to Rome, shall be made from henceforth to Chancery.

Sect. 6. 4thly, The exercising the Jurisdiction of a Suffragan, without the Appointment of the Bishop of the Diocese, is made a Præmunire, by 26 H. 8. 14. which sets forth at large how Suffragans are to be nominated, &c.

Sect. 7. 5thly, By 25 H. 8. 20. If a Dean and Chapter refuse to elect one named in the King's Letter for a Bishoprick, and to certify such Election to the King within 20 Days after the Licence shall come to their Hands; or if any Archbishop or Bishop, after such Election (or Nomination by the King, in Default thereof, &c.) refuse to confirm and consecrate, within twenty Days, the Person signified to them by the King's Letters Patents, they incur a Præmunire.

Sect. 8. 6thly, Maintaining the Pope's Power is made a Præmunire, by 5 Eliz. 2. as hath been more fully shewn, Ch. 17. S. 37, 38.

Sect. 9. 7thly, By 13 Eliz. 7. * If any one shall bring into the Realm, &c. any Agnus Dei Crosses, Pictures, Beads, or such like Superstitious Things, pretended to be hallowed by the Bishop of Rome, &c. and shall deliver or offer the same to any Subject to be used in any wise; or if any one shall receive the same to such Intent, and

* Par. 7.
8. 10.

not discover the Offender, &c. or if a Justice of Peace, having any Offence in that Act declared unto him, do not within sixteen Days declare it to a Privy Counsellor, he incurs a Præmunire.

† Vide Su-
pra Ch.
15. S. 3.

Sect. 10. 8thly, † Contributing to the Maintenance of a Popish Seminary, is made a Præmunire, by 27 Eliz. 2. par. 6.

² S. 28.

³ 1 Eliz. 1.
par. 19.
⁴ S. 33.

Sect. 11. 9thly, As to the Refusal of the Oaths, It is enacted by 1 & 5 Eliz (which continue ² still in Force, though they mention the Queen only, and say nothing of her Successors) That all ³ Ecclesiastical Persons (who are sufficiently ⁴ described in a Certificate of their Refusal, &c. by the Words in Sacris

⁵ 5 Eliz. 1.
par. 5.

ordinibus constituti) and all Ecclesiastical and Temporal Officers; and all Persons having the King's Fee or Wages; and all Persons taking Orders, or any Degree in any University in this Realm, ⁵ and all Schoolmasters publick or private, Barristers, Benchers, Readers, Ancients in any House of Court, &c. Attorneys, Sheriffs, and Officers belonging to the Common, or any other Law, or to the Crown, or to any Court, shall take the Oath of Supremacy in open Court before they shall be admitted to their Offices, and if they belong not to any Court, they shall take it

⁶ 5 Eliz. 1.
par. 6.

before such as shall admit them to their Vocation, &c. Also any Bishop ⁶ may tender it to any Spiritual Person within his Diocese, as well in Places exempt as others; (but if a Man tender it as Bi-

⁷ S. 30.

⁸ 5 Eliz. 1.
par. 7.

shop who is not such, the Defendant ⁷ may take Advantage of it on the general Issue.) Also ⁸ Commissioners may be appointed by the Lord

⁹ S. 29.

Chancellor to tender it to such as by their Commission they shall be authorized to tender it unto. (which Commission ⁹ sufficiently sets forth to what Persons the Oath is to be tendered by describing them under general Words, with-

with-

without naming them particularly by their Names) And if any Person compellable by either of the said Acts, or appointed by the Commissioners to take the said Oath, shall refuse it, being tendred, and shall be indicted, &c. within a Year, he incurs a Præmunire. And such Refusal must be certified within forty Days, under Pain of 100 l. before the King, in his Court of King's Bench. (Yet the Certificate ⁱ may be made to the ⁱ S. 32. Judges of the Court by Name, and needs not be by exprefs Words to the King in his Court of King's Bench.) And the Sheriff of the County wherein the said Court shall sit, may impanel a Jury who shall inquire of such Refusal, (viz. by way of Indictment ^k or Presentment ^k S. 35. in such manner as if it had happened in the same County. But the Trial ^l must be by ^l S. 35. a Jury of the County in which the Oaths were refused.

Sect. 10. The Oath ^m must be taken in ^m S. 31. the Words expressed in the Statute, and ^{36.} cannot be qualified by any Reserve whatsoever. Also it must in Substance be recited in an Indictment, in the very Words of the Statute; yet it hath been adjudged, that the Words in Conscience, instead of in my Conscience, and Sea of Rome, instead of See of Rome, make no material Variance.

Sect. 11. A Bishop's Certificate of a Refusal of the Oath being entred on Record, as brought into Court such a Day and Year per A. B. Cancellarium of such Bishop; is ⁿ sufficient, without adding the Words per Mandatum Episcopi. ⁿ S. 32.

Sect. 12. By 3 * Jac. 1. Any Bishop, or two * Ch. 4. Justices of Peace (one of them being of the Quo- par. 13. rum) may tender the Oath of Obedience to any ^{14.} we above eighteen, being under the Degree of Nobis-

Nobility, and convicted or indicted of Recusancy, or not having received the Sacrament twice in the Year past, and also to any suspected Stranger who shall not purge himself upon Oath; and shall certify the Names of such as take it to the next Quarter-Sessions, and commit those who refuse it till the next Assizes or Sessions, where it shall be again tendered; And if the said Persons, or any others of the Age of Eighteen, other than Noblemen or Noblewomen, shall there refuse it, being tendered, they incur a Præmunire, unless they be Feme Coverts, who shall be committed till they

- * 3 Jac. 1. take it. Also ° the Lords of the Council may
4. par. 41. tender it to any Nobleman or Woman, of the Age of Eighteen, who refusing it incur a Præmunire, Femmes Covert excepted.

Sett. 13. And by 7 Jac. 1. 6. par. 26. 27. Any Privy-Counsellor, or Bishop within his Diocese, may require any Baron or Baroness, of the Age of Eighteen; and any two Justices of the Peace. (one being of the Quorum) may require

By what Means such Justice may compel the Party to appear. See B. 2. Ch. 13. & 14. any other Person of that Age to take the said Oath. And if any Person of or above the said Age and Degree shall be presented, &c. for not coming to Church, &c. Three of the Privy Council, whereof the Lord Chancellor, &c. to be one, shall require such Person to take the Oath. And if any one of the said Age, and under the said Degree, shall be presented, &c. for not coming to Church, &c. Or if the Minister, &c. shall complain to any Justice of Peace, &c. and the Justice shall find Cause of Suspicion, then any one Justice shall require such Person to take the Oath: And if any Person of the Age of Eighteen shall refuse to take it being duly tendered, they shall be bound over to the Assizes or Sessions, where if they refuse again, they incur a Præmunire. And all such

Refu-

Refusers are disabled to execute any publick Place of Judicature, or to bear any other Office, (being no Office of Inheritance, or Ministerial Function) or to practice the Common or Civil Law, Physick or Surgery, or the Art of an Apothecary.

Sect. 14. But by 1 W. & M. The Oaths of Supremacy and Obedience prescribed by these Statutes are abrogated, and new Oaths of Allegiance, and Renunciation of the deposing Doctrine, and a Declaration against foreign Jurisdiction, substituted in their Room. And all Persons required to take, or authorized to tender the said abrogated Oaths, or either of them, are in like Manner required and authorized to take and tender the said new Oaths and Declaration. And by 7 W. 3. 24. Serjeants at Law, Counsellors, Attorneys, Solicitors, Proctors, Clerks or Notaries, practising as such in any Court without taking the said Oaths, and subscribing the Declaration, incur a Præmunire.

Sect. 15. 10thly, Denying by preaching, &c. the Power of the Parliament to limit the Succession of the Crown, &c. is made a Præmunire by the Statutes set forth more at large, Ch 17. S. 45.

Sect. 16. Generally the Statutes of Præmunire refer the Punishment to 16 Ric. 2. 5. which enacts, That the Offenders shall be put out of the King's Protection, their Tenements and Chattels forfeited to the King, and that they be attached by their Bodies, and brought before the King and his Council, there to answer, &c. or that Process be made against them by Præmunire facias, in Manner as is contained in the Statutes of Provisors.

Sect. 17. A Person attainted in Præmunire can bring no Action whatsoever; neither ^a S. 47.
^a is

- § S. 48. ^r is it safe for any one, knowing him to be guilty, to give him any Aid, Comfort, or Relief. And anciently ^f it was holden, that any one might lawfully slay him, as being the King's Enemy; and it seems doubtful even at this Day, whether any one may not lawfully kill any Person who shall send or bring into, or execute within the Realm, any Process from *Rome*. But ^t it hath been resolved, That a *Præmunire* forfeits Land in Tail for the Life of the Offender only.
- § S. 48.
 See B. 2.
 Ch. 49.

S. 49. *Seft.* 18. A Statute, by appointing that an Offender shall incur the Penalty and Danger mentioned in 16 R. 2. §. doth not confine the Prosecution to the particular Process thereby given.

For the Judgment in *Præmunire* see B. 2 Ch. 48.

C H A P. XX.

Of Misprision of Treason.

- S. 1. *Seft.* 1. **E** Very Treason and Felony include a Misprision, and may be proceeded against as such only.

Misprisions are negative or positive.

- S. 2. *Seft.* 2. The negative Misprision more immediately against the King is called Misprision of Treason, and consists in the bare Knowledge and Concealment of High Treason, without any Degree of Assent to it. But if it be accompanied with any Circumstances which shew such an Assent, it amounts to High Treason: As if one, ha-

having Notice of an intended Treasonable Meeting, go into the Company, and hear the Treason, and conceal it; or if one, who has been by Accident in such a Company, and heard their Treason, meet them a second time, and hear their Treason and conceal it.

S. 3.

Sect. 3. Also whoever receives and comforts any Traitor, knowing him to be such, is himself a principal Traitor.

S. 4.
B. 1. Ch.
29.

Sect. 4. Neither is it sufficient for one who knows of an Intent to rise, to discover that there is such a Design, without disclosing the Persons, nor even to disclose those to one who is no Magistrate.

S. 2.
S. 5.

Sect. 5. But 'tis said, that he who is told in general that there will be a Rising, but nothing of the Particulars of the Design, or of the Persons to rise, needs not make any Discovery at all.

S. 6.

Sect. 6. By 14 *Eliz.* 2. It is made Misprision of Treason to forge foreign Coin not current.

C H A P. XXI.

Of Contempts against the King's Courts.

POSITIVE Misprisions, more immediately against the King, are either against his Courts, or his Prerogative, or his Person, or his Title.

Sect. 1. Anciently, fighting in the King's Palace was a capital Offence: And at this Day,

S. 1. 2.

- Day, by 33 H. 8. 12. par. 7. Malicious striking in the King's Palace, whereby any
- S. 6. Blood shall be shed, is punishable with the loss of Hand, perpetual Imprisonment, and Fine at the King's Pleasure. But it seems no Palace is within this Statute, but such wherein the King is actually Resident at the time.
- S. 3. *Sect. 2.* If a Person, in the Presence of the King's Bench, Chancery, Common-Pleas, or Exchequer, or before the Justices of Assize, or Oyer and Terminer, draw his Sword on a Judge, whether he strike or not, or strike any Person with or without a Weapon, he shall lose his Hand, and his Goods, and the Profits of his Lands during Life, and suffer perpetual Imprisonment; the Offence being laid as done *Coram Domino Rege*. And *son Assault Demesne* is no Excuse for an Offence of this Kind.
- B. 2. Ch. 48. S. 4. *Sect. 3.* Also it seems, That he who rescues a Prisoner from any of the Courts above-mentioned, without striking, shall suffer the like Punishment, except that of losing the Hand.
- S. 5. *Sect. 4.* And he who makes an Affray near the said Courts, but out of their View, shall be imprisoned, and severely fined. And so shall those who make Reflections on the
- S. 10. Justice or Honor of the Proceedings of such Courts.
- S. 7. *Sect. 5.* And those who disturb such Courts by reproachful Words to a Judge sitting in them, may be fined and imprisoned, and compelled to ask Forgiveness, with Papers in their Hats, or other Circumstances of Ignominy.

Sect. 6. And a Man may be bound to the Good Behaviour for giving another the Lie in *Westminster-Hall*, sitting the Courts.

S. 9.

Sect. 7. Also one may be fined and imprisoned for making an Affray in an inferior Court of Record.

S. 10.

Sect. 8. And he who speaks contemptuous and reproachful Words to the Judge of such a Court, in the Execution of his Office, may be immediately fined by such Judge, or, as some say, may be indicted.

S. 11.

Sect. 9. And formerly it was holden, That a Man might be indicted for reflecting, whether directly or obliquely, on a Sentence given in any Court Ecclesiastical or Temporal: But the contrary seems agreed at this Day; and it seems that the proper Punishment for contemptuous Words spoken of or to Judges of inferior Courts, or Justices of Peace, not being at the time in the actual Execution of their Offices, is to bind the Party to the Good Behaviour.

S. 12. 13.

Sect. 10. It is a High Misprision for a Man to assault or threaten his Adversary for suing him, or a Counsellor or Attorney for being against him, or a Juror for giving a Verdict, or a Gaoler for keeping one in safe Custody.

S. 14.

Sect. 11. It is also a High Misprision for a Grand-Jury Man to discover to a Person indicted the Evidence against him; or for one who is examined before the Privy-Council concerning his Knowledge of a Crime, to discover what passed on the Examination, in order to suppress a farther Discovery; or for any one to advise a prisoner to stand mute; or to endeavour to dissuade a Witness from giving Evidence against a Person indicted, &c.

† *Vide infra* Ch 31.
S. 1.

S. 15.

CHAP.

C H A P. XXII.

Of Contempts against the King's Prerogative.

Sect. 1. **I**T is a Contempt for a Peer not to come to Parliament, or to depart thence without the King's Licence; or for a Privy Counsellor to refuse to give his

S. 2.

Advice on an Affair of State; or for any one to refuse to serve the King in Person, if he be able, or to find another, if he be not able, against Rebels, and foreign Invaders; or, as some say, to refuse to serve the King for Pay in his Wars abroad.

S. 3.

Sect. 2. It is also an Offence to receive a Pension from a foreign Prince, without Leave from our King.

^a B. 2. Ch.

22.

S. 4.

Sect. 3. It is a Contempt ^a to disobey a Summons to appear before the Privy Council, or to refuse to answer their Questions concerning a Matter of State: To refuse to give Evidence ^b to a Grand Jury concerning Treason: To assemble at a Turnament against the King's Prohibition: To go beyond Sea against the King's Will, signified either by the Writ of *Ne exeat Regnum*, or under the Great, or Privy Seal, or Signet, or by Proclamation: To continue beyond Sea contrary to the King's Letters Patents.

^b Salk. 278.

2.

C H A P. XXIII.

Of Contempts against the King's Person and Government.

IT is generally a high Misprision to do or say any thing which may render the King unsafe, odious, or contemptible, or raise Jealousies between him and his Subjects; as by charging the Government with Acts of Oppression, or Weakness; or doing any Act which impliedly tends to encourage Rebellion, as absolving Persons at the Gallows, who being condemned for Treason, shew no Signs of Repentance; or endeavouring to frighten the King into a Change of his Measures, as subscribing a Petition to him, which intimates, That Thousands will be discontented if it be not granted; spreading false Rumours concerning his Intentions to do Things generally unpopular; charging him with a Breach of the Coronation-Oath; cursing him; giving out that he wants Valour, Steadiness, or Wisdom, or any other way speaking contemptuously of him, &c.

S. 2.

S. 3.

S. 4.

S. 5.

S. 6.

S. 7.

F

C H A P.

H A P.

C H A P. XXIV.

Of Contempts against the King's Title.

S. 1. *Sect. 1.* **I**T was some Time thought an Overt-Act of High Treason to deny the King's Title, As by saying that he is a Bastard, or Usurper, &c. or That another has a better Title to the Crown. However, it is certainly highly criminal, and punishable in the Discretion of the Court, with Fine and Imprisonment, and infamous Punishment, according to the Circumstances of the Case.

S. 3. *Sect. 2.* And it seems an Offence of the like Nature to refuse to take the Oath of Allegiance to the King, which by the Common Law, all Laymen above the Age of twelve Years are bound to take at the Tourn, or Court-Leet.

S. 4. *Sect. 3.* Under what Penalties Officers are bound by Statute to take the Oaths of Allegiance and Supremacy; and where the Refusal thereof shall amount to a Praemunire, hath been already shewn, Ch. 8. & 19. I shall therefore only take Notice in this Place, that by 1 W. & M. 8. All Persons refusing a lawful Tender of the said Oaths, shall be committed for three Months, unless they pay a Sum not exceeding forty Shillings: And if they refuse again at the end of three Months, shall be imprisoned six Months, or pay a Sum not above ten, nor under five Pounds; and also find Sureties for their Behaviour and Appearance at the next Assizes.

Contempts against the King's Title.

67

Affixes, where, if they refuse, they shall be incapable of any Office, &c.

Sect. 4. And by 13 & 14 W. 6. and 1. Geo.

3. All Officers (not having an Office of Inheritance executed by Deputy) and all that receive any Pay, Salary, Fee, or Wages, by Grant from the King; all Ecclesiastical Persons; all Persons on any Foundation in any University, being of the Age of eighteen Years; all Tutors, Schoolmasters and Ushers; all Preachers and Teachers of separate Congregations, high or chief Constables, Serjeants at Law, Counsellors, Attorneys, Solicitors, Proctors, Clerks, and Notaries, by practising as such in England, shall within three Months after their Admittance into their Office, &c. take and subscribe the Oaths of Abjuration, Allegiance, and Supremacy, at one of the Courts at Westminster, or at the general Quarter-Sessions of the Peace where they shall reside, or otherwise shall ipso facto adjudged incapable to hold their Offices, &c. And if they shall execute the said Oaths, &c. and be thereof Convicted, they shall be disabled to prosecute any Suit, &c. and forfeit

Sect. 5. And any two Justices of Peace may tender the said Oaths to suspected Persons, and Refusal being certified at Sessions, &c. and from thence to the King's Bench or Chancery, the Party shall be adjudged a Popish Recusant Contemner.

S. 9.

Sect. 6. And if any Member of either University shall neglect to take and subscribe the said Oaths, or to produce a Certificate thereof under the Hand of some proper Officer of the respective University, and cause the same to be entered in the University-Register, within one Month after his taking them) And the Persons in whom the

F 2

Right

Right of Election of such Member shall be, shall neglect to elect some fitting Person in his stead within twelve Months, &c. then the King may nominate, &c.

C H A P. XXV.

Of Felony.

Offences more immediately against the Subject are either capital, or not capital.

The Capital are either by Common Law, or by Statute.

Those by Common-Law come under the Notion of Felony, which *ex vi termini* signifies *quodlibet crimen* ^a *felleo animo perpetratum*, and is always accompanied ^b with an evil Intention, and never imputable to a meer Mistake or Misanimadversion.

^c S. 3. *Sect. 2.* Anciently a manifest Intention to commit Felony has been adjudged to amount to Felony; but at this Day it is punishable only as a high Misdemeanour.

^d S. 2. *Sect. 3.* All Treason ^d includes Felony, and therefore an Indictment of Treason, if it want the Word *proditorie*, is pardoned by a Pardon of all Felonies.

C H A P. XXVI.

Of Casual Death, and of Deodands.

Felonies by Common Law are either,

1. Against a Man's Life, or
2. Against his Goods, or
3. Against his Habitation, or
4. Against the due Execution of publick
office, which last shall be considered in
the Second Book.

Sec. 1. **R** Regularly not only the Weapons
wherewith one Man kills an-
other, but even Animals, and Things with-
out Life, which occasion the Death of a
Man, tho' without the Default of any other
are ^a forfeited to the King, in order ^a S. 3.
to be disposed of in pious Uses.

Sec. 2. And it seems ^b the more prevail- ^b S. 4.
ing Opinion at this Day, that it makes no
Difference, whether one who is killed by
a Fall from a Horse or Cart, &c. were
of the Age of Discretion, or not.

Sec. 3. But it seems that Things ^c fixed ^c S. 5.
to a Freehold, cannot be Deodands.

Sec. 4. If a Man be drowned by a Fall
from a Ship in Salt-water, or through the
Violence of the Stream, in riding over a
River, nothing ^d is forfeited. If one be ^d S. 6.
killed by a Fall from a Ship in Fresh-water,

Of Casual Death and of Deodands.

the Ship only is forfeited, and not the Merchandise, for that no way contributed to his Death. And for the like Reason, if one be killed by a Fall from the Shafts of a Waggon, on which he is riding, it seems that the Waggon and Horses only are forfeited, and not the Loading: But this also is forfeited, where a Man is killed by the Bruise of a Wheel of a Waggon in Motion, for the Rule is, *Omnia quaeque movent ad mortem sunt deodanda*. But if one be killed by a Fall from the Wheel of a Waggon, while it stands still, the Wheel only is forfeited.

Sect. 5. In all these Cases, if the Party die not of the Wound within a Year^e and a Day, nothing^f is forfeited; but if he die within the Time, that Forfeiture has Relation to the Time of the Wound, and cannot be saved by any Alienation or other A& in the mean Time.

Sect. 6. Nothing^g can be seized as a Deodand, till it be found by the Coroner's Inquest to have caused a Man's Death; but after such Inquest the Sheriff must answer for its Value, and may levy it on the Town where it fell, and therefore the Inquest ought to find its Value.

^e *Infra*
ch. 27. S. 1.

^f S. 7.
Vid. infra
ch. 24 S. 1.

^g S. 8.
See 4 Ed. 1.
De Officio
Coronatoris

C H A P. XXVII.

Homicide.
Of Felo De Se.

Sect. 1. **H**omicide properly ^a signifies the killing of a Man by a Man; ^a Ch. 26. and not only he who by a Wound or Blow, ^{S. 2.} by strangling or famishing, &c. directly causes another's Death, may be said to be guilty of it; but ^b also he who does any Act whatever that proves the Occasion of ^b Ch. 31. another's Death: As where one carried his ^{S. 4. to 11.} sick Father in a frosty Season from Town to Town, by Reason whereof he died: Or where an Harlot left her Infant in an Orchard, cover'd only with Leaves, in which Condition it was struck by a Kite, and died: Or where one by Duress of Imprisonment causes a Man to accuse an Innocent Person, who on his Evidence is condemn'd and executed: Or where one incites a Madman to kill himself, or another: Or where one lays Rats-bane, to kill Mice or Rats, and a Man happens to be poison'd with it: Or, as some say, where one ties not up an Ox or Horse, known to be used to gore or strike, which afterwards kills a Man: And it makes no Difference in any of these Cases, that the Party might have recovered, if he had not neglected the proper Methods for his Cure. But a Man shall in no Case be said to kill another, who does not ^c die within a Year ^cvid. supra and ch. 26. S. 5.

and a Day after the Hurt, and in the Computation thereof the whole Day on which the Hurt was received, shall be reckoned the First.

Homicide is either against a Man's own Life, or another's.

Sect. 2. Homicide against a Man's own Life brings him under the Notion of a *Felo de se*, if at the Time ^d he were of the Age of Discretion and *Compos mentis*.

^d Ch. 27.
S. 1.

Sect. 3. And in some Cases a Man may be a *Felo de se*, by Construction of Law, without any Intention against his own Life: As ^e where one is killed by the breaking of a Gun, which he discharges at another, with an Intent to murder him; or by falling down on a Knife, which a Person struck by him to the Ground, happens to have in his Hand. But ^f if a Man be killed by hastily running on a Knife, or Sword, which a Person assaulted by him, and driven to the Wall, holds up in his Defence, he shall not be adjudged a *Felo de se*, but the other shall be judged to have killed him *se defendendo*.

^e S. 4.

^f S. 5.

^e S. 6.

Sect. 4. If a Man ^g be killed by another on his own Request or Command, yet is he not a *Felo de se*, but the other is as much a Murderer, as if he had acted merely on his own Head.

^h S. 7.

Sect. 5. A *Felo de se* forfeits ^h all Chattels whatsoever in Possession, and also all personal Choses in Action, which he has solely in his own Right; and all Chattels real which he holds either jointly with his Wife, or in her Right; and all personal Things

Things in Action, and, as some say, entire Chattels in Possession, to which he is intitled jointly with another, on any Account, except Merchandize: But he forfeits nothing that he has as Executor or Administrator; and, as some say, a Moiety only of such joint Chattels as may be severed.

Señ. 6. Neither is his Bloodⁱ corrupted, ¹ S. 8. or his Lands of Inheritance forfeited; nor does his Wife lose her Dower.

Señ. 7. Neither^k is any Part of his personal Estate vested in the King, before the Self-murder is found by some Inquisition; and therefore the Forfeiture is saved by a Pardon, before the Inquisition. But if there be no Pardon,^l the whole is forfeited immediately after the Inquisition, from the Time of the Wound. ¹ S. 10. ^{supra} 26. S. 5.

Señ. 8. If the Body can^m be found, the Inquisition ought to be taken by the Coroner *super visum corporis*; and it is a Question, Whether an Inquisition so taken be traversable: Butⁿ if the Body cannot be found, the Inquiry may be by Justices of Peace, or by the King's Bench, if the Felony were in the County, where the Court sits; and such an Inquisition certainly is traversable. ^m S. 11. ⁿ Vid. B. 2. ch. 9. ^o S. 17.

Señ. 9. All Inquisitions^p of this Kind ought certainly and particularly to set forth the Circumstances of the Fact, and in the Conclusion add, that the Party in such Manner *felonice*, &c. murdered himself: And if the Premises be insufficient, as if they set forth the Fact in a nonsensical Manner: As that the Party flung himself into the Water, ^p S. 14, 15. Salkfield 337.

^a Quere Salk. 377. But ^r if it be full in Substance, the Coroner may be served with a Rule, to amend it in Form.

C H A P. XXVIII.

Of Justifiable Homicide.

Homicide against the Life of another, either amounts to Felony, or does not.

That which amounts not to Felony, is either Justifiable, which causes no Forfeiture at all; or Excusable, which causes the Forfeiture of the Party's Goods.

Sett. 1. Justifiable Homicide must be
^a S. 1, 22. owing to some unavoidable ^a Necessary, without any Manner of Fault in the Party, who if he ^b in Truth acts upon Malice, coloured under the Pretence of Necessary, shall have no Advantage from such a Pretence.

^c S. 3. *Sett. 2.* It seems a reasonable ^c Opinion, and countenanced by the old Books, That a Fact amounting to justifiable Homicide, being specially pleaded, and proved to the Court on an Indictment or Appeal of Murder, the Party shall be dismissed without being arraigned, &c. But it is certain, that a Fact amounting to excusable Homicide, cannot be so pleaded, but the Party must plead

plead Not Guilty, and give the special matter in Evidence. Also it is certain, that where a Fact amounting to Justifiable Homicide is found by a Jury, the Party is to be dismissed, without being obliged to purchase his Pardon, &c.

Justifiable Homicide is either of a Publick, or a Private Nature.

That of a Publick Nature, is either occasioned by the Execution, or Advancement of Justice.

As to that occasioned by the Execution of Justice, these Rules are to be observed.

Sect. 3. First, That the Judgment, by Vertue whereof the Party was put to Death, be given by one who had ^a Jurisdiction ^d S. 4, 5, 6. in the Cause; for otherwise both Judge and Officer may be guilty of Felony, as if the Common Pleas give Judgment on an Appeal of Death, or Justices of Peace on an Indictment of High Treason, and award Execution, which is executed. But if Justices of Peace condemn a Man to Death, on an Indictment of Trespass, and he be executed, they only, and not the Officers, are guilty of Felony, because they had a Jurisdiction over the Offence, and therefore their Proceedings are erroneous only, and not void. ^{Vid. infra} 31. S 19.

Sect. 4. Secondly, That it be executed by the lawful Officer; for those ancient ^e S. 7. Opinions, That any one may kill a Person attainted of Felony, and that a Man condemned

demned in an Appeal of Death, is to be executed by the Relations of the Deceased, are now obsolete, and at this Day even the Judge ^s who condemns a Man, cannot execute his own Sentence; neither can the proper Officer do it, but by a lawful Command, without being guilty of Felony.

^s S. 9.

^s S. 10.

Sect. 5. Thirdly, The Execution ^s must pursue the Judgment, therefore if the Sheriff behead a Man, where Beheading is no Part of the Sentence, it is the general Opinion, ⁱ that he is guilty of Felony.

ⁱ See B.2. ch.51.

Homicide may be justified on Account of the Advancement of Justice in the following Instances.

^s S. 11.

Sect. 6. First, Where one who ^s has actually committed a Felony, defends himself, or flies from those who lawfully pursue him, whether they be publick or private Persons, and they cannot possibly take him alive, in which Case they may lawfully kill him.

ⁱ S. 12.

Sect. 7. Secondly, ⁱ Where an Officer who has a Warrant to take a Man upon an Indictment of Felony, cannot possibly take him, in which Case he may also in like Manner kill him, whether innocent or guilty, and whether any Felony were in Truth committed or not.

^m S. 13.

Sect. 8. Thirdly, Where a Criminal ^m assaults his Gaoler, and endeavours to break the Gaol, in which Case the Gaoler may justify killing him in the Affray.

Sect.

Sect. 9. Fourthly, Where Rioters, or forcible Enterers, or Detainers, stand in their Defence, and continue the Force, in Opposition to the Command of a Justice of Peace, &c. or resist such Justice endeavouring to part them; in which Case the killing of them may be justified; and so perhaps may the killing of dangerous Rioters by any private ⁿ Persons, not being able otherwise to suppress them, or to defend themselves from them. ⁿ S. 14, 23.

Sect. 10. Fifthly, Where Trespassers ^o in ^o S. 15. a Forest, Chace, Park, Warren, or inclosed Ground, wherein Deer are kept, will not render themselves to the Keepers upon an Hue and Cry to stand to the King's Peace, but fly or defend themselves; in which Case they may lawfully be slain,

Sect. 11. Sixthly, Where either ^p of the ^p S. 16. Parties is killed in a Combat in Appeal, or Writ of Right.

Sect. 12. Seventhly, Where a Sheriff ^a being resisted by one whom he attempts lawfully to arrest in a civil Action, or to retake after he has arrested him, unavoidably kills him in the Affray; in which Case he may justify it, though he never gave back, but stood his Ground, and attacked the Party: But if a Person barely fly from the Execution of Civil Process, the Sheriff cannot justify killing him. ^a S. 17, 18, 19, 20.

Sect. 13. Justifiable Homicide of a private Nature is that which happens in the just Defence of one's Person, House, or Goods; as where the Owner of a House, ^r ^r S. 21. or any of his Servants, or Lodgers, &c. kill one who attempts to burn it, or to commit

mit any Felony in it: Or a Woman kills one who attempts to ravish her: Or a Servant coming suddenly, and finding his Master robbed and slain, falls upon the Murderer immediately, and kills him, in the Height of his Surprize, and under just Apprehensions of the like Attempt upon himself: Or where ^t a Man kills another who assaults him in the Highway to rob, or murder him.

^t S. 25, &c.

Chap. 29.

S. 16. Et

supra S. 7.

^u S. 24, 25.

Sect. 14. And it seems ^t that in all these Cases one may justify killing the Assailant without giving back at all; and if a ^v Man be dangerously assaulted by another, as with a drawn Sword, &c. without any previous Affray; though in a Town or other Place, where Help may be expected, and use the same Caution to avoid Fighting, as would make the Killing the Assailant Homicide *se defendendo* only, if there had been a previous Affray, and then unavoidably kill the Assailant, it seems reasonable that he may justify it.

^x S. 26.

^y S. 27.

Sect. 15. And it seems that in some special Cases a Man may justify even the killing of an innocent Person: As where in a Shipwreck ^x two Persons get upon the same Plank which will not support them both, and one thrusts the other off: Or where a Man alarmed in the Night by Thieves, and searching for them in the Dark with a Sword drawn, happens to kill an innocent Person, who had hid himself in the House.

Sect.

Se&t. 16. But a Man shall never ^z justify ^z S. 12. himself under a Necessity which he brought on himself by his own Fault, and therefore if Rioters wrongfully detaining a House by Force, kill the Party ejected, or any of his Assistants, who attack it from without, and endeavour to burn it, they are guilty of Manslaughter.

Se&t. 17. Neither ^a can a Man justify the ^a S. 23. killing another in the Defence of his Possessions or Person, from a bare private ^b *Vid. su.* Trespass; and therefore he that kills another, who claiming a Title to his House, attempts to enter it by Force, and shoots at it; or one that breaks open his Windows to execute a Warrant to arrest him; or one that persists in breaking his Hedges, after he is forbidden, is guilty of Manslaughter; and he who in his own Defence ^c *Se&t.* 23. kills another that assaults him in his House in the Day-time, and plainly appears to intend only to beat him, is guilty of Homicide *se defendendo*. ^{Chap. 29.} *Se&t.* 13.

CHAP. XXIX.

Of Excusable Homicide.

EXcusable Homicide is either *per infortunium*, or *se defendendo*.

Se&t. 1. Homicide *per infortunium*, or by Mis-adventure, is where ^a a Man in doing ^a *Se&t.* 1. a lawful Act, without any Intent of Hurt, chances

- b Sect. 2.** chances to kill another: As by the Head ^b of a Hatchet flying off at Work; or by
c Sect. 3. a ^c Piece of Timber, flung down from a House, standing out of any Road, after loud Warning to all Persons, to stand clear;
d S. 6. or ^d by a Gun discharged at Wild Fowl; or by the Glancing of an Arrow, shot at Burs;
e S. 7. or by an unlucky ^e Fall, or Kick at Wrestling or Football, or other such like Sports;
f S. 8. or ^f in fighting at Barriers, or tilting by the King's Command; or by moderate ^g Correction of a Son, Scholar, or Servant: But if the Correction be immoderate, the Offence will be Manslaughter at least; and if the Instrument be such as apparently endangers Life, as an Iron Bar, &c. it will be Murder.

h S. 2. *Sect. 2.* If a Man ^h whip a Horse, on which another is riding, whereupon he springs out, and runs over a Child, and kills him, the Rider is guilty of Homicide *per infortunium*, the other of Manslaughter.

Sect. 3. Regularly, If the Act which occasions the Death of a Man, be a Trespass, or cannot but be attended with the manifest Danger of Hurt to the Person of some Man, or be of such a Nature, that it cannot be used without manifest Hazard of Life, and there were no deliberate Intent of Mischief, the Killing is esteemed Manslaughter: As if a Man kill another by shooting at Deer in a third Person's Park; or by flinging down a Piece ^k of Timber into a common Street or Highway, tho' in Work, and after Warning to stand clear; or by throwing Stones at another wantonly in Play; or by tilting without the King's Command;

i S. 19.

k S. 4.

or

or by parrying with naked Swords covered with Buttons at the Points, or with Swords in the Scabbard.

Sect. 4. But if a Man happen to kill another in the Execution of a deliberate Purpose to commit a Felony, or to do a personal Hurt to another, or to do any unlawful Act, which cannot but manifestly be attended with Danger of great personal Hurt to some other, though it be not intended against any one in particular, he is guilty of Murder: As^l where a Man kills another by maliciously beating or wounding him; or by shooting^m at tame Fowl, with an Intent to steal them; or by knowingly and deliberately dischargingⁿ a Gun, or throwing a great Stone or Piece of Timber, or riding with a Horse used to strike, among a Multitude, tho' he do it only with an Intent to divert himself by frightening them; or^o by engaging in a Riot, or robbing a Park, &c.

Sect. 5. Homicide *se defendendo* is^p where one who is forced to fight on a sudden Assault, retreats as far as he can, without endangering his own Life, and then, and not before, in order to save his Life, or to defend his Person from a Battery (especially if the Assault were in his own House) gives the other a mortal Wound; and it is said^r by some, that in such a Case it is not material who struck first, but *Quere.* But^s if a Man attack another upon Malice in such a manner as endangers his Life, and then fly to the Wall and kill him, he is guilty of Murder.

^l S. 10. infra Ch. 31. S. 15.

^m S. 11. infra Ch. 31. S. 18.

ⁿ S. 12. infra Ch. 31. S. 21.

^o Vid. infra Ch. 31. S. 17.

^p S. 13, 14. 15.

^q sup. Ch. 28. S. 17.

^r S. 17. sup. ch. 27. S. 3.

^s S. 17. infra Ch. 31. S. 12.

Sect. 6. No excusable Homicide is Felony, ^t neither was it ever punished with ^u Death; and the Meaning of the Statute of *Marlbridge*, that *murdrum de cætero non adjudicetur, ubi infortunium tantummodo adjudicatur est*, is only ^x that such Homicide shall not be accounted such a private Killing, for which the Township in those Days was to be amerced, unless it could find the Offender, or prove that the Person killed was an *Englishman*.

Sect. 7. Excusable Homicide was anciently bailable upon the ^v Writ *De odio & atia*; but is not bailable ^{||} by Justices of Peace; neither can it be pleaded specially ^z to an Indictment of Murder, but must be given in Evidence on not guilty: and if a Person be found guilty of it, either on a special Indictment, or by a Verdict, setting forth the Circumstances of the Case on a general Indictment, he shall be bailed, and forfeit his Goods: But upon a Removal of the [†] B. Ch. Record by *Certiorari* into [†] Chancery, he ^{37. S. 1.} shall have his Pardon of course.

C H A P. XXX.

Of Manslaughter.

Homicide against the Life of another amounting to Felony, is either with or without Malice.

Sect. 1. That without Malice, is generally called Manslaughter, which is ^a such a killing as happens either on a sudden ^b Quarrel, or on the Commission of an unlawful ^c Act, without any Premeditation or deliberate Intent of doing Mischief; and therefore ^d there can be no Accessories in it.

^a S. 1.
^b Infra Ch. 31. S. 7. to 18.

^c Supra Ch. 29. S. 3 & Ch. 31. S. 18.

Sect. 2. The Statute of 1 Jac. 1. 8. which is said to be declarative ^e of the Common Law, takes away the Benefit of the Clergy from any Person who shall stab or thrust (viz. with such Weapon the Using ^f whereof may come under these Words) any Person or Persons that hath not then a Weapon drawn) (under ^g which Words a Pistol discharged, or Pot thrown are included) or that hath not then first stricken (viz. at any ^h Time during the Quarrel before the mortal Wound given) the Party which shall so thrust or stab, so as the Person or Persons so stabb'd, &c. lie within six Months, &c.

^d B.2. Ch. 29. S. 4.

^e S. 5.

^f S. 8.

^g S. 8.

^h S. 6.

Sect. 3. Those only ⁱ who gave the actual Thrust or Stab, and not those who may be said to have given it by Construction of Law, as having abetted it, are within the Statute, and therefore if it cannot be proved by whom the Wound was given, no one can be found guilty within the Statute.

ⁱ S. 7.

Sect. 4. The Indictment needs not conclude ^k contra formam Statuti, because the Statute makes no new Offence, but only takes away Clergy from an old one, and leaves it to the Judgment of the Common Law. Therefore a Man indicted on the Statute, may be found guilty of general Manslaughter: And if a Fact ^l be laid and found contra formam Statuti, which cannot

^{S. 9.}
^k See B.2. Ch. 25. S. 117.

possibly be so; as that *A.* abetted *B.* *contra formam Statuti*, the Words *contra formam Statuti* shall be rejected, and the Party shall be dealt with in the same manner, as if they had been omitted.

Sect. 5. No one can be found guilty within the Statute, unless the Indictment pursue it at least in Substance.

^m H. P. C.
58 See B.
2. Ch. 25.
S. 112 to
117.

C H A P. XXXI.

Of Murder.

Homicide against the Life of another amounting to Felony with Malice, is either Murder or Petit Treason.

^aS. 1, 2, 3.
supra Ch.
29. S. 6.

Sect. 1. By Murder at this Day ^a we understand the wilful killing of any Person whatsoever, through Malice forethought, whether openly or in private; and whether the Person slain were an *Englishman* or a Foreigner.

In what Cases a Man may be said to kill another, having been already shewn, Ch. 27. *Sect. 1.* I shall here only consider,

1. In what Places such killing is within the Cognisance of the Law.
2. Who are such Persons, by killing of whom a Man may commit Murder.
3. What

3. What killing shall be adjudged to be of Malice forethought, or Murder.

Sect. 2. As to the First Point, The Common Law ^b seems to have had no Method for the Trial of any Murder occasioned by a Wound given out of the Realm, or on the High Sea, out ^c of the Body of any County; because the Fact could not be tried by a Jury of the Neighbourhood where it happened. But ^d such Murder hath been always triable by the Civil Law before the Constable ^e and Marshal (if the King think fit to appoint a Constable) Whether the Party die out of the Realm, or (as some say) in the Realm. Also at this Day, it may be tried, in Relation to the principal ^f Offenders, but not as to the Accessories, before special Commissioners, according to the Course of the Common Law, viz. ^g by 33 H. 8. 23. if the Party die here or in a foreign Realm; and by 27 H. 8. 4. and 28 H. 8. 15. if he die ^h at Sea.

^b S. 11. 12.

^c B. 2. Ch.

25. S. 42.

^d S. 11. 12.

^e B. 2. Ch.

23. S. 11,

12, 13.

^f S. 11. B. 2.

Ch. 25.

S. 41. 44.

& Ch. 49.

S. 4.

^g S. 11. 12.

B. 2. Ch.

40.

^h Vid inf.

Ch. 37. &

B. 2. Ch.

25. S. 45.

ⁱ S. 13. B.

2. Ch. 25.

S. 35 to

39.

^k S. 14 B. 2.

Ch. 25. S.

39. 40 Ch.

35. S. 10

Sect. 3. Death in one County from a Wound in another was not ^l indictable at Common Law, because the Counties could not join in finding the Indictment; but an Appeal might be brought in either County, and the Fact tried by a Joinder of the Counties: And at this Day, by 2 and 3 Ed. 6. 24. It may be indicted, &c. by a Jury of the County where the Death happens.

Sect. 4. By 26 H. 8. 6. Murder ^m in Wales may be indicted in an adjoining English County, but Appeals must still be brought in the proper County.

G 3

Sect.

¹ S. 15, 16,
17.

Sett. 5. As to the Second Point, it seems clear, that the Crime of killing, or counselling to kill another, is no way lessened by his having been an Alien or Infidel, or attainted of Treason, &c. or an Infant *in Ventre sa Mere* at the Time of the Wound or Counsel given: But it is said, That the causing a Woman to miscarry, is a great Misprision only at this Day, unless the Child be born alive.

Sett. 6. As to the Third Point, it is observable, that any formed Design of doing Mischief, shewing the Heart to be perfectly wicked, comes^m under the Notion of Malice forethought, which is most properly called express Malice, when it has a direct Purpose to do a personal Hurt to the Party slain in particular; and implied Malice, when it is principally intended for some other Purpose.

Sett. 7. And first of express Malice, as to which it seems agreed,ⁿ that wherever a Man in cool Blood meets another by Appointment, and fights him on a precedent Quarrel, and kills him, both he and his Seconds^o are guilty of Murder: And it is strongly holden, that the Seconds of the Deceased are also equally guilty.

Sett. 8. And it is not material^p who struck first, or gave the Challenge: Neither is it any Excuse for a Man that he long declined meeting the other, and did it after long Importunity, and with an Intent only to vindicate his Reputation, and to disarm his Adversary, and not to kill him.

Sett.

Sett. 9. A Man is esteemed to fight in cool Blood, when he meets^q in the Morning ^{q S. 22.} on an Appointment over Night, or in the Afternoon on an Appointment in the Morning; or, as some^r say, if he fell into other ^{r S. 23.} Discourse after the Quarrel, and talked calmly upon it; or if he have so much Consideration, as to observe that it is not proper or safe to fight at present for such and such Reasons, which shew him to be Master of his Temper.

Sett. 10. A. on a Quarrel with B. says, He will not strike him, but will give B. a Pot of Ale to touch him, whereupon B. strikes, and A. kills him, he is guilty^r of ^{r S. 24.} Murder. ^{H. P. C.}

Sett. 11. A. and B. being in Malice^r, A. ^{48.} challenges B. who refuses to meet him, but says, he shall go the next Day to such a Town, and A. accordingly meets and assaults^v him, and is killed: B. seems to be ^{u H. P. C.} guilty of Manslaughter or Murder, as it ^{48. Crom.} shall appear from the Circumstances of the Case, whether he gave such Information ^{22 b. say} accidentally or artfully, with an Intent to ^{that this is} elude the Law. ^{Man-} ^{slaughter.}

Sett. 12. If a Man be^w so far provoked ^{w S. 27.} by a Breach of Promise, or by a Trespass ^{33.} on his Lands or Goods, or by any Words, or Gestures whatsoever, as thereupon immediately to push at another with a Sword, or strike him with a dangerous Weapon, before his Sword is drawn, and thereupon a Fight ensue, and the Person assaulted be slain, the Assailant is guilty of Murder, tho' he were^x driven to the Wall, when ^{x S. 26 su.} he gave the mortal Wound; for by assault- ^{praCh 29.} ^{S. 5.} ing

ing the other in such a base Manner, he shews that his Intent was not to fight with him, but to kill him: But ⁷ if he had made no Pass till the other's Sword had been drawn, or had only ² beaten him, in such Manner as made it appear that he meant only to chastise him, he would have been guilty of Manlaughter only.

² S. 30. *Seft.* 13. If two who have formerly fought happen to fight again on a new Quarrel, they seem to be guilty ⁴ of Manlaughter or Murder, as it shall appear from the whole Circumstances, whether they fought in Truth on the old Quarrel, or the new one.

² S. 36. *Seft.* 14. If two strive ^b for the Wall, and one happen to kill the other; or a Man happen to kill another, who claiming a Title to his House, attempts forcibly to enter it, &c. or to kill one who endeavours unlawfully to arrest him, or to force him from his Possession of a Room in a publick House; or if a Man immediately kill one whom he finds in Bed with his Wife, or that pulls him by the Nose, or fillips him in the Forehead, or actually strikes him; or if one ^c seeing his Son's Nose bloody, and being told by him that he was beaten by such a Boy, run three Quarters of a Mile, and beat the Boy with a small Cudgel, whereof he dies, in all these Cases the Offence is no more but Manlaughter.

² S. 38. *Seft.* 15. If ^d a Person in cool Blood, by way of Revenge, deliberately beat another in such a Manner that he dies of it; or if a Man upon a sudden Provocation execute his Revenge in such a Manner as

shews

shews a cruel and deliberate Intent of doing a personal Hurt, he is guilty of Murder: As where the Keeper of a Park finding a Boy stealing Wood, tied him to a Horse's Tail, and beat him, whereupon the Horse ran away and kill'd him.

Murder by Implied Malice comes generally under the following Instances.

Sec. 16. I. Where the principal Intent is to commit another Felony; as to which it seems agreed that where-ever a Man happens to occasion the Death of another from the Execution of a deliberate Purpose to commit a Felony, he is guilty of Murder: As ^e where a Man shooting at tame Fowl, with an Intent to steal them; ^e S. 41. Vid. *infra* Ch. 39. *Sec.* 5. or at another Man with an Intent to murder him, happens to kill a Man; or where one sets upon a Man with an Intent to rob him, and kills him in making Resistance; or where ^f a Man prepares Poison ^f S. 42. for one Man, which is afterwards taken by another, tho' never so much against the Will of him that prepared it; and it makes no Difference in the Case, that the Party stirred about the Poison before he took it, whereby he made its Operation the more forcible. But ^g if a Man happen to ^g S. 43. poison another with Ratsbane laid for Rats, he is guilty of Homicide *per infortunium* only. Also if a private Man happen to be killed by Persons fighting on a sudden Quarrel, in endeavouring to part them, the Offence seems to be but Manslaughter, ^h unless before he came up to ^h S. 44. 45. them,

them, he gave proper Notice, by commanding them in the King's Name to keep the Peace, or otherwise, that his Intention was only to part them, in which Case the Killing him will be Murder: And so also will the Killing of a Watchman or Constable, doing their Duty, tho' not known by the Parties to be such.

- Sect.* 17. II. Where the principal Intent is to commit a Breach of the Peace, not intended against the Person of him that happens to be slain; as to which it seems clear, that regularly where divers Persons resolve to resist all Opposers in the Commission of any Breach of the Peace that naturally tends to raise Tumults; as by committing a violent Disseisin with great Numbers of People, hunting in a Park, &c. and in so doing happen to kill a Man, they are all guilty of Murder; yet if such Disseisors having forcible Possession of an House, afterwards kill the Party whom they ejected, as he is endeavouring in the Night forcibly to re-enter, and to fire the House, they are guilty of Manslaughter only, perhaps for this Reason chiefly, because the Party slain is himself so much in Fault. But ¹ in such or any other Quarrel, if a Peace-Officer, doing his Duty, though not known; or even a private Person giving proper ^m Notice of his Intention to keep the Peace, be slain, it will be Murder.
- ¹ S. 46.
- ² S. 47.
- ¹ S. 48.
- ^m Supra S. 16.

- S. 51, 52, 53, 54.
- Sect.* 18. III. Where the principal Motive is to assist a third Person; as to which it seems ⁿ agreed, that if one who knew nothing

thing beforehand of the Quarrel, see others fighting, whether on a set Duel, or a sudden Affray, and take Part with one Side, and kill one of the other; or help one of the Affraiers to a Sword, wherewith he kills another, he is guilty of Manslaughter only, unless the Person slain were a publick Officer; as a Bailiff endeavouring to make an Arrest, &c. in which Case the Killing is Murder, unless the Warrant were either void in it self, or illegally executed; in which Cases the Offence seems to be but Manslaughter: For the Law in such Cases judges by the Event, which those who so rashly engage in such dangerous Quarrels which it is every Man's Duty to suppress, must abide at their Peril; but it is not material, whether the Person slain were known by him that killed him, to be an Officer, or not.

• See the next Section.

Self. 19. IV. Where the direct Design is to escape from an Arrest; as to which it seems clear, that regularly it is Murder to kill an Officer in the Execution of Civil Process, whether in the Day or Night, though such Process were erroneous, and tho' the Officer did not tell the Party from what Court it issued, or at whose Suit which he needs not do when prevented by a Resistance), and though he did not renew his Warrant, which he is not bound to do at all, if he be an Officer commonly known, and acting within his own Preincts; nor without a Demand, if he be a special one, &c. But if the Arrest were without Warrant, as of J. S. Baronet by

¶ S. 55, 56.

¶ S. 56.

B. 2. Ch.

13. S. 29.

¶ S. 57.

a Warrant against J. S. Knight; or if a
 † S. 58. good Warrant¹ be illegally executed; as
 where a Bailiff is killed in breaking open
 † See B. 2. a Window, &c. or, as it seems, in making
 Ch. 14. an Arrest on a Sunday, since 29 Ca. 2. 7.
 the Offence will be but Manslaughter.

Sect. 20. V. Where the principal Purpose is to usurp an illegal Authority; as to which it seems clear, that if Persons take
 † S. 59, 60. upon them to put others to Death, either
 supra Ch. by Colour of a new Jurisdiction unknown
 28. S. 3. to our Laws, or of an old one, which
 clearly has nothing to do with such Matters; as by the Sentence of a Court Martial in Time of Peace; or by the Judgment of the Common Pleas in a capital Case, both the Judge and Officers are guilty of Murder. But neither seem to be in any Fault, where they act in Pursuance of a Commission defective only in Form, which if it were strictly regular, would undoubtedly authorize them.

Sect. 21. VI. Where no Mischief is intended at all; as where a Man intending
 w S. 61. only to make Sport, rides deliberately among a Multitude with a Horse used to
 supra Ch. strike, &c. And it is * said in some of the
 29. S. 4. old Books, that if a Man not duly authorized to be a Physician or Surgeon, cause
 * S. 62. by his Unskillfulness the Death of one whom he undertakes to cure, he is guilty of Felony; but this doth not seem to be clearly settled, nor whether such Felony, granting it to be such, shall be called Manslaughter or Murder.

C H A P. XXXII.

Of Petit Treason.

Sect. 1. **A**nciently ^a an Attempt to kill ^a S. 1.
a Husband, Piracy by a Sub-
ject, Discovery ^b of the King's Counsel by ^b Supra
a Grand Juror, and many other Offences, Ch. 21. S.
came under the Notion of Petit Treason; 11.
but now by 25 *Ed. 3.* it is reduced to three
Instances; viz. where a Servant kills his
Master, or a Wife her Husband, or an Ec-
clesiastick his Prelate, to whom he owes
Obedience.

Stat. 2. This Statute is to be construed ^a S. 2.
strictly; and therefore a Son killing his Fa-
ther, is not within it, unless he can be
brought under the Notion of a Servant,
by serving the Father for Meat, Drink,
Cloths, or Wages, in which Case he shall
be indicted by the Name of a Servant.

Sect. 3. But a Servant who kills his Mi-
stres, or his Master's Wife, is within the
Statute, because the Persons slain are with-
in the Meaning of the Word Master, which
signifies any one to whom another stands
related as a Servant. ^a S. 3.

Sect. 4. Also the Murder of a Man by
one who was his Servant, on a Malice taken
during the Service, is within the Statute,
because the Malice was treasonable. ^a S. 4.

Sect. 5. Also all Procurers, Aiders, and ^a S. 5.
Abettors of any of the Petit Treasons in
the Statute, are punishable in the same
Manner

Manner as before ; for the Statute meant only to exclude other Crimes from being accounted Petit Treasons, but not to alter the Law as to these.

S. 6.

Sect. 6. If the Killing of a Master be attended with such Circumstances as would have made it Murder, if the Person killed had been a Stranger, it will be Murder in the Servant ; but if it were upon such a sudden Affray as would have made it Manslaughter, or *se defendendo* only in the Case of a Stranger, it will be no higher a Crime in the Servant, and shall never be construed to amount to Petit Treason, but where in the Case of a Stranger, it would have been Murder ; for all Petit Treason includes Murder, and is the highest Degree of it.

s. 6.

Sect. 7. If a Stranger, in the Absence of a Servant by his Procurement kill the Master, they are guilty of Murder only, not of Petit Treason, because the Offence of the Accessory cannot rise higher than that of the Principal. But if the Servant had been either actually present, or present only in Judgment of Law, as being ^d in the same House, tho' not in the same Room, when the Fact was committed, he would have been guilty of Petit Treason, as a Principal, and the Stranger of Murder. And if a Servant, or even a Stranger, procure a Servant in his Absence to murder the Master, it seems that he is an Accessory to the Petit Treason.

^c B. 2. Ch.
29. S. 7, 8.

C H A P. XXXIII.

Of Simple Larceny.

Sect. 1. **L** Arceny, which is derived from *Latrocinium*, is either Simple, or Mixt. The Simple is the felonious and fraudulent taking and carrying away the mere personal Goods of another, not from his Person, nor out of his House: And if the Goods be above the Value of twelve Pence, it is called ^a Grand Larceny, if ^b of that Value or under, Petit Larceny.

^a S. 1.^b S. 1.

Sect. 2. And first, ^c it is not sufficient that there be a Fraud or Intent to steal, unless there be also a Taking; for all Felony includes Trespass, and every Indictment of Larceny must have the Word *Cepit*; and therefore if there be no Trespass in taking the Goods, there can be no Felony in carrying them away: As where ^d one finds lost Goods, and converts them to his own Use *animo furandi* (for the Owner is not much aggrieved where nothing is taken from him, but what he had lost before) or where one imbeziles Goods, which he has in his Possession, by a Delivery from the Owner for a special Purpose, As to carry them to a certain Place, or to fit them for a certain Use, or to keep them for the Owner: For in these Cases it may be presumed that the Owner has a plain Remedy by a Civil Action; and therefore there

^c S. 31, &c.*The Import of the Word Cepit.*^d S. 3, 4.

there is no Need of a more severe Law for his Security.

S. 5. Sect. 3. Yet in some special Cases a Man may be guilty of Larceny in Respect of Goods which he has by Delivery from the Owner: As where a Carrier or Miller, &c. fraudulently and clandestinely take and imbezil Part of the Goods which were delivered to them in the Way of their Trade; in which Case the Possession of such Part distinct from the Whole, was gained by their own Wrong, and in a Manner more base than if they had been Strangers: Or where a Carrier, after he has carried Goods to the Place appointed, secretly takes them away again *animo furandi*, in which Case the Possession which he received from the Owner being determined, his second Taking is in all Respects the same as if he were a Stranger.

S. 10. Sect. 4. The Statute of 3 and 4 Will. & Mar. after a Recital that idle Persons had used to hire Lodgings, with an Intent to steal the Furniture, enacts and declares, That if any Person or Persons shall take away with an Intent to steal, imbezil, or purloin, any Chattel, which by Contract or Agreement they are to use, or shall be let to them to use in such Lodging, such taking, imbezilling or purloining, shall be adjudged Larceny.

S. 17. Sect. 5. And it is enacted by 7 Ja. 1. 7. That if any Sorter or Kember, &c. of Wool, or Weaver of Yarn, &c. shall imbezil it, &c. and shall be convicted before two Justices of Peace, he shall be whipped.

Sect. 6. And by 21 H. 8. 7. If a Servant (being of the Age of eighteen Years, and not an Apprentice) shall have a Casket, Jewel, or Money, or Goods, or Chattel of the Master (under which Words Choses in Action are not included) delivered to him by the Master to keep. (which Words include Goods delivered by a Servant to a Servant, to keep for the Master, but not Rents received by a Servant of a Master's Tenants; or Money received on a Sale of the Master's Goods, or Goods received from the Master, in Order to sell them) and such Servant (viz. still continuing such) withdraw himself from the Master, and go away with such Casket, &c. to the Intent to steal the same, and defraud the Master, &c. or else being in the Service, without Assent of the Master, imbezil the same Casket, &c. or any Part thereof, or otherwise convert the same to his own Use, with like Purpose to steal it, he shall be guilty of Felony, if such Casket, &c. be of the Value of 40 s. and is excluded from Clergy, by 12 Ann. 7. when the Offence happens to be in a Dwelling-house. S. 11.
S. 14.
S. 13.
S. 12.
S. 13.
S. 14.
S. 15.

Sect. 7. It seems agreed, that the Wasting or Consuming a Master's Goods is not within the Statute: Also it hath been holden that if a Servant, who hath Corn or Money delivered him by the Master to keep, of his own Head make the Corn into Malt, or melt down the Money into Plate, and then go away with it, he is not within the Statute, because the Property was altered; yet if the whole were done with felonious Intent, it seems difficult to give Reason, why it shou'd not be both with-
H in

in the Letter and Meaning of the latter Clause of the Statute, as a Conversion of the Master's Goods, &c. with an Intent to steal them. And it is agreed, that if a Servant make up his Master's Cloth delivered to him to keep into a Suit of Cloths, or his Leather into Shoes, and then go away with them, he is within the Statute. And it is said to have been adjudged, that if a Servant change his Master's Money delivered to him to keep from Silver into Gold, and then go away with it, he is within the Statute: But the Reason given for this Case, is because Gold and Silver are both of the same Nature, viz. Money.

Crompt. 35.
b.

Set. 8. It seems generally agreed, that
S. 6. he who has the bare Charge of Goods (as a Shepherd has of Sheep, or a Butler of Plate) or that has only the special Use of Goods (as a Guest in an Inn) and not the Possession, may be guilty of Larceny, in fraudulently Taking them away; for the Offence comes as properly under the Word *Cepit*, and the Fraud is as secret, and the Villany more base than if it had been done by a Stranger.

Set. 9. He who intending to steal Goods obtains a Delivery of them from the Sheriff, by Vertue of a Replevin, or by way of Execution of a Judgment obtained by
S. 8. Imposition on a Court, without any Colour of Title, by false Affidavits, &c. may be indicted as having feloniously taken them, for the Law will not endure to have its Justice eluded by such shameful Evasions.

Of Simple Larceny.

99

Sec. 10. Also he who steals Goods from one who had stolen them from me, may be indicted as having stolen them from me, because in Judgment of Law both the Possession and Property of them was always in me: And for this Cause he that steals Goods in the County of *A*, and carries them into that of *B*. may be indicted in either. But a Pirate carrying to Land the Goods taken at Sea by Piracy, cannot be indicted at Law, as having taken the Goods at Land, because the Original taking was not such whereof the Common Law takes Consuance.

S. 9.

Vide infra Ch. 37.

Sec. 11. As there must be a Taking to make a Larceny, so must there be also a Carrying away; for the Word *Asportavit* is necessary in the Indictment: But this doth not require, that the Thing taken be quite carried off, but is satisfied by the Parties removing it, tho' never so little, from the Place where it was: As where a Guest having taken off the Sheets from his Bed, with an Intent to steal them, carries them into another Room; or where a Man intending to steal a Horse leads him towards the Gate of the Close; or where one pulls off Wool from Sheep, or strips their Skins, with an Intent to steal them; or where one intending to steal Plate takes it out of a Trunk, and lays it on the Floor.

The Import of the Word Asportavit.

S. 18.

Sec. 12. A Feme-Covert may be guilty of Larceny by stealing a Stranger's Goods, but not by stealing her Husband's: Neither can a Stranger be guilty of Larceny, by receiving the Husband's Goods from the

Feme-Covert, S. 19. supra Ch. 1. S. 6, 7.

Of Simple Larceny.

Hands of the Wife, as he may be by carrying her away by Force and against her Will, with the Goods of the Husband.

Necessity.

S. 20.

Sect. 13. It is said to be no Felony for a Man reduced to extream Necessity, without his own Fault, to take so much of another's Victuals as will save him from starving.

Of what Goods there may be Larceny.

S. 21.

Sect. 14. A Man cannot be guilty of Larceny in Taking away Things annexed to the Freehold; as Corn standing, or Apples growing, &c. if he take them away at the same Time that he sever's them: Nor

S. 22.

in Taking away mere Choses in Action, tho' he also takes away the Box in which they are kept: Nor in Taking away a Villain, or Ward: Nor in Respect of any thing of a base Nature, as a Dog, Cat, Bear,

S. 23.

Fox, Monkey, Ferret, or such like, except a Hawk, known by him that takes it to be reclaimed; nor in Respect of such

S. 24.

Things, wherein no one had a Property at the Time, as Treasure-Trove, or a Wreck, Waif, or Stray, before they have been seized by them that have Right to them; or Fish in a River, or other great Water; or Deer, Hares or Conies in a Forest, Chase, or Warren; or old Pidgeons out of the House, &c.

S. 25.

S. 26.

S. 28.

Sect. 15. But one may be guilty of Larceny, in Taking domestick Beasts, as Horses, Mares, Colts, &c. or in Taking any Creature that is fit for Food, and *domitæ naturæ*, or its Eggs; or in Taking Fish in a Pond or Trunk; or young Pidgeons, or Hawks, or Swans in a Nest; or, as some say, Wild Pidgeons in a Dove-house shut up; or

S. 25.

Hares

Hares or Deer in a Park, or such other Inclosure, wherein the Owner may take them whenever he pleases, without any Danger of their Escaping; or in Taking Things *ferre naturæ*, being fit for Food, and known by him that takes them to be tamed, as tame Pheasants, Partridge, Deer, Conies, &c.

S. 26.

Señ. 16. Also one may be guilty of Larceny, in Taking away Swans marked, or pinioned; or Swans unmarked, if kept in a Pond or private River. But it is no Larceny, to take the Eggs of a Swan or Hawk, &c. but for this the Party shall be imprisoned a Year and a Day, &c. by 11 H. 7.

S. 27.

Señ. 17. Also one may be indicted of Larceny, in stealing *Bona Capellæ*, being in the Custody of I. S. during a Vacancy; or in stealing *Bona ignoti*; or *Bona Parochianorum*; or in stealing a Shrowd from a Corps, which in Judgment of Law continues the Property of him who was the Owner of it when put on.

S. 29. B. 2.
Ch. 23.
S. 78. Ch.
25. S. 73.
Ch. 35. S.
3.

Señ. 18. There is a special Case in which a Man may be guilty of Larceny, in stealing Goods, the absolute Property whereof is in himself: As where one who has delivered Goods to a Carryer or Tailor, &c. afterwards, with an Intent to charge such Carryer or Tailor, fraudulently and secretly takes them away.

S. 30.

Señ. 19, If two, or more together steal Goods above the Value of twelve Pence, ^a each of them is guilty of Grand Larceny: And ^b so, according to the old Books is he, who at several times steals the same Person's Goods, each of which are under the

Grand and
Petit Lar-
ceny.
^a S. 32.
^b S. 33.

H 3

Value

Value of twelve Pence, but amount in the whole to more.

S. 35. *Sect. 20.* On an Indictment for stealing to the Value of 10s. the Jury may find specially, that the Party is guilty, but that the Goods stolen are worth but ten Pence, in which Case the Judgment shall be only as for Petit Larceny.

§ S. 36. *Sect. 21.* Petit Larceny is Felony^c as much as Grand Larceny, and consequently the Indictment for it must have the Word *felo-nice*; and where-ever a Theft would be Grand Larceny, if above the Value of twelve Pence, it^d is Petit Larceny, if it do not exceed that Value, and is not punishable with the Loss of Life or Lands, but only with the Forfeiture of Goods, and Whipping, or other corporal Punishment.

CHAP. XXXIV.

Of Robbery.

MIXT Larceny is either from a Man's Person, or from his House.

That from his Person either puts him in Fear, and then it is called Robbery, or does not put him in Fear, and then it is called Larceny from the Person.

§ S. 3. *Sect. 1.* Robbery^a is a felonious and violent Taking away from the Person of another Goods to any Value, putting him in Fear.

Sect.

Of Robbery.

103

Sect. 2. And First, there^b must be a Taking away; and therefore he, who attack's me to rob me, and cuts off the Girdle of my Purse, but does not take it up, cannot^c be indicted of Robbery; but he, to whom I deliver my Money under the Terror of his Assault, or to whom I send my Money as bound by Oath, which in my Fear he compelled me to take,^d may in Judgment of Law as properly be said to take it from me, as if he had taken it out of my Pocket with his own Hands. Neither^e can one who hath once compleated the Offence by taking my Goods into his Possession, purge it by any Re-delivery.

^b Supra
Ch. 33. S.
2 to 12.

^c S. 6.

^d S. 4.

^e S. 5.

Sect. 3. In some^f Cases a Man may be said to robb me, where he never actually had any of my Goods in his Possession: As where I am robb'd by several in one Gang, and one of them only takes my Money; and if several go out, with an Intent to rob, and attack a Man who escapes from them, and afterwards one of them rides from the rest, and robb's a third Person in the same Highway, tho' without their Knowledge and out of their View, and then returns to them, the Law looks upon them all as of his Gang, and equally guilty.

^f S. 7.

B. 1. Ch.
29.

Sect. 4. Secondly, There must be a Taking away from the Person, viz. There must be something taken from a Man in his Prefence, which is under his immediate and personal Care and Protection, as my Horse, or other Cattle, standing or feeding by me; or Money which in my Fright I flung into a Bush; or my Hat, which fell

S. 8.

from my Head ; or my Goods in my Servant's Portmanteau travelling with me.

Sect. 5. Thirdly, The Taking must be violent, viz. the Party must be put into Fear by Assault or Violence, which Fear causes him to part with his Money; but it is not material, whether there was any Weapon drawn, or not; or whether the Money was delivered upon the Rogue's Command, or afterwards upon his ceasing to use Force, and begging an Alms.

S. 11. *Sect. 6.* A Claim of Property in the Thing taken, if without Colour, is no Manner of Excuse.

S. 10. *Sect. 7.* Some have holden that if a Man compell another against his Will to sell his Goods which he is carrying to Market, he is guilty of Robbery, though he give more than they are worth. *Quare.*

S. 12. *Sect. 8.* Robbery differs from all other Larcenies, in that it shall have Judgment of Death, how small soever the Value of the Thing taken may be; and must be laid as done on an Assault with Violence and Putting the Party in Fear—*à Persona J. S. violenter & felonice cepit & asportavit, in magnum prædicti J. S. terrorem.*

See B. 2. Ch. 33. But all Larcenies agree in this, that they were within the Benefit of the Clergy at the Common Law.

C H A P. XXXV.

Of Larceny from the Person.

Señ. 1. **L** Arceny from the Person of a Man without Putting him in Fear, is either private ^a and without his ^a S. 1. Knowledge (in which Case it is excluded from ^b Clergy, if laid and found above the ^b S. 3, 4. the Value of twelve Pence, and to have B. 2. Ch. been done *clam* and *secretè*, &c. according 33. S. 25. to the Words of 8 Eliz.) or open and a- 59. vowed before his Face ; as where one cheapens Goods in my Shop, and runs away with them, without paying ; which seems more properly indictable as a Trespass than Felony, unless the Offender be either unknown, or immediately fled the Country if he were known. However such Larceny is certainly within the Clergy, unless it be to the Value of 40 s. and committed within a Dwelling-house.

C H A P.

C H A P. XXXVI.

Of Larceny from a House.

L Arceny from a House is by Statute in many Cases excluded from Clergy, as shall be more fully shewn B. 2. Ch. 33. But tho' it have a higher Aggravation of Guilt than simple Larceny, the Common Law doth not seem to have made any Difference between them as to the Punishment, or as to the Circumstances that constitute the Offence.

C H A P. XXXVII.

Of Piracy.

Señ. 1. **T**O what has been said of Larcenies, we shall add some-

^a S. 1, 2. what concerning Piracy ^a, which is a capital Offence by the Civil Law, and after ^b the Statute of 25 Ed. 3. was triable only by that Law.

Señ. 2. But by 28 H. 8. 15. *All Felonies and Robberies, &c. upon the Sea, or in any River, Haven, Creek, or Place, where the Admiral bath or pretendeth to have Power, &c.* (which Words include not Offences in Creeks or Ports within the Body of a County,

^c S. 11.

County, for such have always been cognizable by the Common Law) shall be inquired and tried, &c. in such Places in the Realm, as shall be limited by the King's Commission, in like Form as if they had been done on Land; and such Commissions shall be under the great Seal, directed to the Admiral, &c. or to his Lieutenant, or Deputy, and to three or four others to be named by the Lord Chancellor, to hear and determine such Offences, after the common Course of the Laws of this Land used for Felonies and Robberies, &c. done upon the Land within this Realm. And if any Person be indicted for any such Offence done upon the Seas, &c. such Order, Process, Judgment and Execution shall be had against such Person, as against Felons, &c. for any Felony, &c. upon the Land, by the Laws of the Land is accustomed. And such as shall be convicted of any such Offence by Verdict, Confession, or Process by Authority of any such Commission, shall suffer such Pains of Death, Losses of Lands, Goods and Chattels, as if they had been attainted and convicted of such Offence done upon the Land, and also shall be excluded from their Clergy.

Sett. 3. It seems agreed, that this Statute in ordaining a new Method for the Trial and Punishment of this Offence, does not alter the Nature of it in other Respects; from whence it follows, that it still remains a Felony by the Civil Law only, and in no way cognisable by the Common Law, but only by Vertue of some Statute, and not pardoned by a General Pardon of all Felonies. Neither shall any Person by Vertue of this Statute be construed to be, or punished as Accessories to Piracy before

S. 6.

- S. 7. fore or after, as they might have been, if it had been made a Felony by the Statute; and therefore Accessories at Land to Piracy were not triable at all, and Accessories at Sea were triable only by the Civil Law, before 11 and 12 W. 3. Neither doth an
- Vide infr. S. 8. Attainder of Piracy corrupt the Blood, because the Statute says only, That the Offender shall suffer such Pains of Death, &c. as if he were attainted of a Felony at Common Law. But if the Offender stand mute, he shall have Judgment of Pain *forte & dure*, for the Words of the Statute are, *That a Commission shall be directed, &c. to hear and determine such Offences after the common Course of the Laws of this Land.*
- S. 8.

- S. 10. Sect. 4. It is said, that the Indictment must have both the Words *Felonice* and *Piraticè*, and alledge the Fact done upon the Sea; and that no Offence is punishable within the Act, as Piracy, which would not have been Felony, if done on Land, as the Taking of an Enemies Ship.

- Vid. 1 Geo. 25. and 5 Geo. 11. Sect. 5. By 11 & 12. Wil. 3. 7. All Piracies and Felonies upon the Sea, &c. may be tried and determined at Sea or upon the Land, in any of his Majesty's Islands, or Plantations, &c. to be appointed by King's Commission under the great Seal, or the Seal of the Admiralty, directed to any of the Admirals, &c. and such Persons, as his Majesty shall think fit, who shall have Power jointly or severally, by Warrant, to commit any Person against whom Information of any such Offences shall be given upon Oath, and to call a Court of Admiralty, which shall consist of seven at least, and shall proceed to Trial, according

cording to the Directions set forth at large in the Statute.

Sect. 6. And if any natural born Subject or Denizen shall commit any Piracy or Robbery, or Act of Hostility, against other his Majesty's Subjects, upon the Sea, under Colour of any Commission from any foreign Prince or State, or Pretence of Authority from any Person whatsoever, such Offenders shall be deemed Pirates, Felons and Robbers; and being convicted thereof, according to either of the above mentioned Statutes, shall suffer such Death, Loss of Land, Goods and Chattels, as Pirates, &c. ought to suffer.

Sect. 7. And if any Commander of a Ship, or Seaman, or Mariner, shall in any Place where the Admiral hath Jurisdiction, betray his Trust, and turn Pirate, Enemy or Rebel, and piratically and feloniously run away with his Ship, or any Barge, Boat, Ordnance, Ammunition, Goods or Merchandizes, or yield them up voluntarily to any Pirate, or bring any seducing Message from any Pirate, Enemy or Rebel, or confederate with, or endeavour to corrupt any Commander or Mariner to yield up or run away with any Ship, Goods or Merchandize, or turn Pirate; or if any Person shall lay violent Hands on his Commander, to hinder him from fighting in Defence of his Ship, &c. or shall confine his Master, or make, or endeavour to make a Revolt in his Ship, he shall be adjudged a Pirate, Felon and Robber; and being convicted according to this Act, shall suffer such Death, Loss of Lands, Goods and Chattels, as Pirates ought to suffer.

Sect. 8. And if any Person shall either on Land or Sea wittingly or knowingly set forth any Pirate, or aid, maintain, procure, command or advise any Person to do any Piracy; and such Person

Person shall thereupon do any such Piracy, then every such Person so setting forth any Pirate, or aiding, &c. shall be adjudged accessory to such Piracy. And every Person who knowing that a Pirate has done any Piracy, shall on Land or Sea receive, entertain or conceal any such Pirate, or receive or take into his Custody any Ship or Goods which have been by any such Pirate piratically or feloniously taken, shall be likewise adjudged accessory to such Piracy: And all such Accessories shall be enquired of, tried, &c. according to the common Course of the Law, according to the said Statute of 28 H. 8. as the Principals may be, and no otherwise; and being thereupon attainted, shall suffer such Death, Loss of Lands, Goods and Chattels, as the Principals ought to suffer, according to the said Statute of H. 8. which is declared to be in full Force.

C H A P. XXXVIII.

Of Burglary.

Offences against the Habitation of a Man, are of two Kinds,

1. Burglary.
2. Arson.

S. 1. Sect. 1. Burglary is a Felony, in breaking and entering the Mansion-house of another, or (as some say) the Walls or Gates of a walled Town in the Night, to the In-

tent to commit some Felony within the same, whether such Intent be executed or not.

Sect. 2. And First, It must be in the Night-time; for the Word *noctanter* is necessary in the Indictment, which cannot be satisfied, if it appears on Evidence that there was so much Day-light, that a Man's Countenance might be discern'd by it.

S. 2.

Sect. 3. Secondly, it seems that there must be both a Breaking and an Entry, for both the Words *Fregit* and *Intravit* are necessary in the Indictment; and therefore if on a bare Assault upon an House the Owner sling out his Money, it is no Burglary: Neither will such a Breaking, which is imply'd by Law in every unlawful Entry whatsoever be sufficient, for this Purpose; as where one enters into an House by a Door which he finds open, or through a Hole made there before, and steals Goods, &c. or draws a Thing out of a House thro' a Door or Window which was open before, or enters into a House by the Doors open in the Day-time, and lies there 'till Night, and then robb's without breaking any Part of the House; for the Words are, *felonice & burglariter fregit*. But it is as much a Breaking for this Purpose, to come down by a Chimney, or to open a Window, or unlock a Door; as to force open a Door, or break a Hole in the Wall, &c. Also it is Burglary for one who entred by an open Door, or lay in a House by the Owner's Consent, to unlatch a Chamber-Door, with a felonious Intent, &c. And as some say, it is Burglary for one, who assaults

S. 3.

S. 4.

Of Burglary.

assaults an House in order to rob it, to enter thro' a Door, which was open'd by the Owner, in order to drive him off.

- Sect. 4.* Also if Persons coming to an House with an Intent to rob it, are let in under a Pretence of Business with the Owner, and then rifle the House; or if Persons having such a felonious Intent, take Lodgings in a House, and then fall on the Landlord and rob him; or if Persons having such Intent, raise an Hue and Cry, and prevail with the Constable to search the House, and being let in by that Means, bind the Constable and rob, they are guilty of Burglary.
- S. 5.*

Sect. 5. And it is declared and enacted by 12 *Annæ* 7. *That if any Person shall enter into the Mansion-house of another, by Day or by Night, without breaking the same, with an Intent to commit Felony; or being in such House, shall commit any Felony, and shall in the Night-time break the said House to get out of the same, such Person shall be taken to be guilty of Burglary, and ousted of Clergy, in the same Manner as if he had broken and entred the said House in the Night-time, with an Intent to commit Felony there.*

- Sect. 6.* Any the least Entry with the least Part of the Body, or with an Instrument, is sufficient; as the Putting one's Foot over a Threshold, or a Hand, or Hook, or Pistol within a Window, or Turning the Key of a Door locked on the Inside, or Discharging a loaded Gun into a House, &c. And in some Cases an Entry in Law is sufficient, where there is no actual Entry, as where
- S. 7.* divers come to commit a Burglary, and
- S. 8.* some

some stand in adjacent Places, and the others enter and rob, &c. for the Act of one is the Act of all. And upon the same Ground it may well be argued that a Servant within a House, who in Confederacy with a Rogue lets him in to rob it, is as much guilty of Burglary, as if he had been without the House.

S. 9.
Con. H P.
C. 81.

Sect. 7. Thirdly, According to the constant Course of late Precedents, and Opinions, 'tis necessary to have the Word *Mansionalis* in the Indictment, if the Truth of the Case will bear it. But this seems improper in an Indictment for a Burglary in a Church, or in the Walls or Gates of a Town.

S. 10.

Sect. 8. It is agreed that a House, in which a Man dwells but for Part of the Year; or which he has hired to live in, and brought Part of his Goods into, but has not yet lodged in; or which his Wife has hired, though without his Privy, and lives in without him, will satisfy the Words *Domus mansionalis* in an Indictment of Burglary, tho' no Person were in it at the Time of the Offence.

S. 11.

Sect. 9. Also all Out-buildings, as Barns, Stables, Dairy-houses, &c. being at no great Distance from a House, are looked upon as Parts of it, and consequently Burglary may be committed in them: Also a Chamber in one of the Inns of Court, wherein a Person usually lodges, or a Lodging in a Part of a House, actually divided from the rest of the House, and having a Door of its own to the Street, are agreed to be properly called Mansion-houses, &c. and *Quere*

S. 12.

S. 15.

S. 13, 14.
Con. Ke-
lyng. 83.

whether a distinct Apartment in a House hired by a Lodger for a certain Time, may not also as well be called his Mansion-house, tho' he go into the House at the same Door with the other Inhabitants, for this doth not make the Apartment itself in any Respect the less his own. But if several Persons dwell in one House as Servants, Guests or Tenants at Will, and a Burglary be committed in any of their Apartments, it seems clear that the Indictment ought to lay it in the Mansion-house of the Proprietor.

Sect. 10. There can be no Burglary in a Shop or Work-house, which is leased to one for his Use in the Day-time only; nor in a Ground inclosed, nor in a Booth or Tent.

Sect. 11. Fourthly, Both the Indictment must alledge, and the Verdict find an Intention to commit some Felony; for if it appear that there was only an Intention to commit a Trespass, there can be no Burglary, but it seems that an Intention to commit a Rape, or such other Crime, which was a Trespass only at Law, and is made Felony by Statute, will make a Man guilty of Burglary, as much as if such Offence were a Felony at Law.

S. 18.

CHAP. XXXIX.

Of Arson.

Sect. 1. Arson is a Felony, in maliciously and voluntarily Burning the House of another by Night or by Day.

Sect. 2. It seems that the Word *Domus* is sufficient in an Indictment of this Kind without adding *Mansionalis*, and consequently that Arson may not only be committed in a Mansion-house and its principal Parts, but also in any other House, and its adjoining Out-buildings; and also in Barns full of Corn, whether adjoining to an House or not. But it seems that at this Day the Burning of the Frame of a House or of a Stack of Corn is not accounted Arson, because it cannot come under the Word *Domus*. But by 43 El. 13. It is Felony without Clergy, maliciously to burn or consent to the Burning of any Barn, Stack of Corn, or Grain in Northumberland, Cumberland, Westmorland or Durham. And by 22 and 23 of Ch. 2. 7. it is Felony, maliciously, &c. to burn, &c. any Rick of Corn, Hay or Grain, Barns or other Houses or Kilns in any Place whatsoever, but the Offender may avoid Judgment of Death by choosing Transportation, and may be proceeded against by Justices of Peace, in the Method shewn more at large Chap. 46.

S. 1.

S. 2.

S. 3. *Sect. 3.* It seems clear that one seiz'd in Fee, or but possess'd for Years of a House standing by it self at a Distance from all others, cannot commit Felony in burning it: Also it is strongly holden that one so seiz'd or possess'd of a House in a Town, who burns it, with an Intent to burn his Neighbours, but in the Event burns his own only, is not guilty of Arson, but of a great Misdemeanor only.

S. 4. *Sect. 4.* Neither an Intention, nor even an actual Attempt to burn a House, will amount to Arson, if no Part of it be burnt, for the Indictment must have the Words *incendit & combussit*; but if any Part of the House be burnt, the Offence is not purg'd by the Fire's being put out afterwards, or going out of it self.

S. 5. *Sect. 5.* It is certain, that a Fire hapening through Negligence or Mischance, cannot make a Man guilty of Arson, for the Indictment must be, *quod voluntariè ex malitia sua præcogitata & felonice*; but if one maliciously intending to burn the House of A, happen thereby to burn the House of B, he may be indicted as having maliciously burnt the House of B.

Vid. *supr.*
Ch. 31. S.
17.

C H A P. XL.

Of Felonies by Statute.

Offences more immediately against the Subject made capital by Statute, are either,

- 1 Against Women, or
- 2 Against the Rights of Marriage, or
- 3 Against the Members of a Man's Body, or
- 4 Against Records, or
- 5 Against Cattle, or
- 6 By Purveyors, or
- 7 By Soldiers and Marriners, or
- 8 By Hunters, or
- 9 By Forgers of false Deeds, or
- 10 By Gaolers, or
- 11 By Transporters of Sheep or Wool, or
- 12 By Servants, or
- 13 By *Egyptians*, or
- 14 By Cutters of Pow-dike, or
- 15 By Trespases on the Borders, and Rioters, or
- 16 By Bankrupts, or
- 17 By Counterfeits of Bank-notes, &c.

But before I descend to each of these in particular, I shall premise concerning Felony by Statute in general.

S. 1. *Señ. 1.* First, That where-ever a Statute subjects an Offender to Judgment of Life or Member, it makes the Offence Felony, as much as if it had expressly made it so, but shall never be construed to make an Offence Felony by doubtful Words; as by Prohibiting a Thing under Pain of Forfeiting Body and Goods, or all that a Man hath; or of being at the King's Will, Body, Land and Goods.

S. 3. *Señ. 2.* Secondly, That where a Statute subjects a second Offence to a heavier Punishment than the first, it implies that such second Offence ought to be committed after a Conviction for the first; from whence it follows that if it be not so laid in the Indictment, it shall be punish'd as the first Offence.

S. 4. *Señ. 3.* Thirdly, That where a Statute makes an Offence Felony, it by Consequence subjects the Offender to the like Punishment, and requires the like Construction as to Accessaries, and to all other Intents and Purposes, as is incident to a Felony at Law: But a Statute by Saving the Corruption of Blood, saves the Descent to the Heir; also by Saving the Land to the Heir, it prevents the Corruption of Blood so far, and in both Cases it saves the Wives Dower; but nothing to the Offender himself.

S. 6. *Señ. 4.* If one commit an Offence made Felony by Statute, and then the Statute be repealed, he cannot be punish'd as a Felon, in respect of that Statute.

C H A P. XLI.

Of Rape.

Offences against Women made Felonies,
by Statute are,

- 1 Rape,
- 2 Forcible Marriage.

Sect. 1. Rape is an Offence in having unlawful and carnal Knowledge of a Woman by Force and against her Will, and necessarily requires some Degree, both of Penetration and Emission; but it is said that Emission is *prima facie* an Evidence of Penetration.

S. 1.

Sect. 2. It is no Mitigation of the Offence that the Woman at last yielded to the Violence, if such Yielding were forc'd by Fear of Death, or of Duress; nor is it any Excuse that she consented after the Fact, or that she was a common Strumpet: But it was anciently said to be no Rape to force a Woman who conceives at the Time, but *Quare*.

S. 2.

note

Sect. 3. It is a strong but not conclusive Presumption against a Woman, that she made no Complaint within a reasonable Time.

S. 3.

Sect. 4. All who are present, and assist a Man to commit a Rape, are Principals in it, whether Men or Women.

S. 6.

Of Rape.

S. 4. 5.

Sect. 5. By 18 El. 7. it is Felony without Clergy unlawfully and carnally to know and abuse any Woman-child under the Age of ten Years. And in an Indictment for this Offence it must be prov'd, that the Offender entred the Chil'ds Body, &c. but it is not material, whether she consented or were forc'd.

S. 7.

Sect. 6. By the old Common Law Rape was Felony, especially if the Party ravish'd were a Virgin, but it is said, that such a Virgin might save the Offender's Life by Marrying him: Afterwards it was look'd upon as a great Misdemeanor only, and punishable with Loss of Eyes and Testicles. By *Westm. 1. 13.* it was reduced to a Trespas, subjecting to two Year's Imprisonment, and a Fine at the King's Will; but by *Westm. 2. 34.* it was made Felony again, and by 18 El. 7. it is ousted of Clergy.

C H A P. XLII.

Of Forcible Marriage.

Sect. 1. IT is recited by 3 H. 7. 2. That Women, as well Maidens as Widows and Wives, having Substances, some in Goods, and some in Lands, and some being Heirs apparent, for the Lucre of such Substances were oftentimes taken by Misdoers, contrary to their Will, and after married to such Misdoers, or otherwise by their Assent, or defiled: And thereupon it is enacted, That what Person taketh
any

any Woman so against her Will unlawfully, such Taking, Procuring and Abetting to the same, and also Receiving wittingly the same Woman so taken against her Will, and knowing the same, be Felony: And such Misdoers, Takers and Procurators to the same, and Receitors principal Felons; provided that this extend not to any Person, taking any Woman, only claiming her as his Ward or Bond woman.

Sect. 2. By 39 El. 9. All Principals, or Procurors or Accessaries before such Offence are ousted of Clergy.

Sect. 3. The Indictment for this Offence must set forth both that the Woman had Lands or Goods, or that she was Heir apparent, and that the Taking was for lucre, and also that she was married or defiled; for the enacting Clause in Saying that what Person takes any Woman so against her Will, plainly restrains the Taking to such as is within the Preamble; but it needs not set forth that the Taking was with an Intention to marry or defile.

Sect. 4. It is no Excuse, that the Woman was at first taken away with her own Consent, because if she afterwards be forc'd to continue with the Offender, she may from that Time be properly said to be taken against her Will; for 'till the Force was put upon her, she was in her own Power.

Sect. 5. It is not material, whether a Woman so taken away were married or defiled with her own Consent or not, if she were under the Force at the Time.

Sect. 6. Those who after the Fact receive the Offender, but not the Woman, are not Principals within the Statute; for the

S. 4.

S. 5.

S. 6.

S. 7.

S. 8. the Words are, *Receiving wittingly the same*
 Vid. sup. *Woman so taken*: But it seems that they are
 Ch. 40. *Accessaries after the Offence, as in other*
 S. 3. infra *Cases.*
 Ch. 45. S.

S. 9. *Sect. 7. Those, who are only privy to the Marriage, but no ways Parties, or consenting to the forcible Taking away, are not within the Statute.*

S. 10. *Sect. 8. If a Woman be taken by Force in the County of A. and married in that of B. the Offender may be indicted, &c. in B. for the Continuing of the Force there, amounts to a forcible Taking within the Statute.*

CHAP. XLIII.

Of Offences against the Rights of Marriage.

S. 1, 2, 3. *Sect. 1. BY I Jac. I. II. If any Person within the King's Dominions of England and Wales being married, do marry any Person or Persons, the former Husband or Wife being alive, every such Offence shall be Felony; and the Offender shall receive such Proceeding, Trial and Execution in the County where apprehended, as if the Offence had been committed in such County. But it is provided, That this shall not extend to any Person, whose Husband or Wife shall be continually remaining beyond the Seas seven Years together; or whose Husband or Wife shall absent him or herself the*

one from the other seven Years together in any Parts within the King's Dominions, the one of them not knowing the other to be living within that Time; nor to any Person, who shall be at the Time of such Marriage divorc'd by Sentence (under which Words Divorees *a mensa & thoro causa adulterii*, or *servitii* are said to be included, though there be not the Word *divortiamus*, but only *separamus* in the Sentence) nor to any Person where the former Marriage shall be by Sentence declared void; nor to any Person by Reason of any former Marriage within the Age of Consent; the Benefit of which Clause, if one of the Parties only were under the Age of Consent at the Time of such Marriage, extends as well to the Party above the Age of Consent, as to the other, because the Power of disagreeing was equal on both Sides.

S. 5.

S. 6.

Sect. 2. It is farther provided, That no Attainder for this Offence shall work any Corruption of Blood or Loss of Dower.

Sect. 3. If the first Marriage were beyond Sea, and the latter in England, it is agreed, that the Party may be indicted here; but if the first were in England, and the latter beyond Sea, it is said that there can be no Indictment here, because the Marriage that made the Offence, was not within any Country but *Quere*; for the Statute says, That the Offender shall receive the like Proceedings, &c. in such County where he shall be apprehended, as if the Offence had been committed there.

CHAP.

C H A P. XLIV.

*Of Offences against the Members
of a Man's Body.*

- S. 1. *Señ. 1.* **A**NY Hurt to a Man's Body, whereby he is rendred less
- S. 2. able in Fighting, as the Cutting off, Disabling or Weakening a Hand or Finger, Striking out an Eye or Fore-tooth, or Castration, &c. are properly Maims, and come under the Notion of Felonies; but the Cutting off an Ear, or Nose, are not properly Maims, because they do not weaken a Man, but only disfigure him.
- S. 3. *Señ. 2.* By the old Common Law Castration was punished with Death, and other Maims with the Loss of Member for Member; but of later Days Maim was punishable only by Fine and Imprisonment.
- Señ. 3.* By 22 and 23 Ca. 2. 1. If any Person shall on Purpose and of Malice Forebought, and by lying in Wait, unlawfully cut out or disable the Tongue, put out an Eye, slit the Nose, cut off a Nose or Lip, or cut off or disable any Limb or Member of any Subject, with Intention in so doing to maim or disfigure him in any the Manners before mentioned, the Offenders, their Counsellors, Aiders and Abettors, knowing of, and privy to the Offence, as aforesaid, are declared to be Felons, but without Corruption of Blood, or Forfeiture of Dower, or Lands, Goods, or Chattels.

Of Offences against Records.

125

Sett. 4. If a Man attack another of Malice Forethought, in order to murder him with a Bill or other such like Instrument, which cannot but endanger the Maiming him, and in such Attack happen not to kill, but only to maim him, he may be indicted on this Statute, together with all those who were privy to the Design, and it shall be left to the Jury on the Evidence, whether there was a Design to Murder by Maiming, and consequently a malicious Intent to maim as well as to kill; in which Case the Offence is within the Statute, though the primary Intention was Murder.

Cook's Case.

CHAP. XLV.

Of Offences against Records.

Sett. 1. **BY** the Common Law, and 8 R. 2. 4. it is a great Misdemeanor S. 1, 2. for a Judge, or Clerk, or any other Person, without due Authority to imbezil, deface or alter any Record, or to insert a Bill of Indictment, not found by the Jury among those that are found: And in the Reign of Ed. 1. a Judge was fined Eight hundred Marks, for Raising a Fine of 13 s. and 4 d. set on a poor Man, and Making it 6 s. and 8 d.

Sett. 2. By 8 H. 6. 12. If any Record or Parcel of the same, Writ, Return, Panel, Process or Warrant of Attorney, in Chancery, Exchequer, either Bench, or the Treasury, be willingly stolen, taken

- taken away, withdrawn, or avoided by any Clerk or other Person (which Words include not the Judges themselves, because they begin with Clerks, which are their Inferiors) because whereof any Judgment shall be reversed; such Stealer, Taker away, Withdrawer or Avoider, their Procurators, Counsellors and Abettors, thereof indicted, and by Process thereon duly convicted by their own Confession, or by Inquest to be taken of lawful Men (whereof the one half shall be of any Court of the same Courts, and the other half of other) shall be adjudged for Felons; and the said Judges of the said Courts, of the one Bench or of the other, have Power to hear and determine such Defaults before them, &c. viz. those that first enquire, shall proceed; and there is no Need of a*
- S. 2.** *Special Commission for the Justices of either Bench to determine such Offences, unless where they arise in a different County from that in which the Benches sit. And in such a Commission for London, the Major shall be omitted, for the City-Chartes which require that he shall be a Principal in every Commission, extend not to Causes limited to particular Judges.*
- S. 3.** *Sect. 3. Those Words, Because whereof any Judgment shall be reversed, have the same Purport, as if it had been said, Whereby any Judgment shall be annulled, and lose its Force; for the Statute cannot mean that the Judgment must be actually reversed, because it extends to the Stealing of Records, which prevents the Reversal of the Judgment; and therefore it hath been construed to extend to all material Alterations, whether before or after Judgment,*

ment, though they be afterwards amended by the Court, And it is said, that if *A. B.* is outlawed by the Name of *A. C.* and the Record is afterwards rased and made *A. B.* the Offence is within the Statute, for the Record against *A. C.* is annulled, &c.

Sect. 4. If the Offence were partly in one County, and partly in another, but not fully within the Statute in either, the Party cannot be indicted for a Felony, because the Counties cannot join in Taking the Indictment, but he may be indicted for a Misprision in either County.

S. 6.

Sect. 5. It seems that the Statute by expressly making the Accessories before principal Felons doth not mean to favour the Accessories after, but to leave them to the general Constrution of the Law.

S. 7.
Supra Ch.
40. S. 3.
ch. 42. S. 6.

Sect. 6. By 21 *Ja. 1. 26.* It is Felony without Clergy, but not so as to corrupt the Blood, to acknowledge, or procure to be acknowledged any Fine, Recovery, Deed inrolled, Statute, Recognizance, Bail or Judgment in another's Name, not privy and consenting thereto. And by Vertue hereof, if a Man personate another in the County of *A.* in Putting in Bail before a Judge, and the Bail be filed in the County of *B.* he may be tried in the County of *A.*

S. 10.
2 Jo. 64.

Sect. 6. And by 4 and 5 *W. & M. 4.* Any Person, who shall before Commissioners authorized to take Bail by Vertue of the Statute, in Actions depending in the King's Bench, Common Pleas or Exchequer, represent any other Person, whereby the Person so represented may be liable to the Payment of any Money, Debt or Damages, to be recovered in the same Action, &c. shall be adjudged a Felon.

CHAP.

C H A P. XLVI.

Of Felonies relating to Cattle.

BY 22 and 23 Ca. 2. 7. It is Felony, maliciously, unlawfully, and willingly to kill or destroy any Horses, Sheep or Cattle in the Night-time, but the Offender may avoid Judgment of Death, by chusing that of Transportation for seven Years; and any three Justices of the Peace, whereof one to be of the Quorum, may enquire as well by the Oaths of twelve Men, as by Examination of Witnesses, or by any lawful way, which to them shall seem meet, of the said Offences, and in Order thereto may issue out Warrants, as well for the Summoning of Jurors, as for the Apprehending of all suspected Persons; and may take their Examination, and also cause all such other Persons as to them shall seem likely to make Discovery thereof, to appear before them, and to give Information on Oath concerning their Knowledge of the Premises, so as no such Person shall be proceeded against for any Offence, concerning which he shall be so examined as a Witness, and make a true Discovery: And if a Person so summoned as a Witness shall refuse to appear, or to be examined, he may be committed Quousque, &c. provided that no one be questioned for any Offence against the said Statute, unless he be proceeded against within six Months.

C H A P. XLVII.

Of Felonies by Purveyors.

Se^t. 1. **A** Ntiently the King's Court was supplied with Necessaries from the Demesnes of the Crown; but this Method being found inconvenient was by Degrees disus'd, and the King us'd to appoint certain Officers for this Purpose, call'd Purveyors, who are said to have had the Pre-emption of all Victuals bought by any one to sell again.

Se^t. 1.

Se^t. 2. By *Magna Charter* 21, The King shall not take the Timber of any Person against his Will, and by subsequent Statutes several Offences of Purveyors were made Felonies, as the Taking Things against the Owner's Will, or without Warrant, or without due Appraisement, or without Paying for them, &c. But these Laws having been found by Experience not to have sufficiently provided against such like Oppressions, and several Counties having been oblig'd to submit to sundry Compositions to redeem themselves from them, it is enacted by 12 Ca. 2. 24. Par. 12. That no Sum of Money be taken, rated, paid or levied in Regard to any Provision, Carriages or Purveyance for the King; and that no Person by any Authority under the Great Seal, or otherwise by Colour of Buying or Making Provision or Purveyance for the King or Queen, or their Children,

Se^t. 2.

K

or

or for any of their Household, shall take any Thing whatsoever of any Subject without his free and full Consent; nor shall summon use or require any Subject to find any Cattle or Carriage for the Use of the King or Queen, or their Children, for the Carrying their Goods, without such full and free Consent. And that no Pre-emption shall be allow'd or claim'd in Behalf of the King or Queen, &c. in Market or out of Market, but that it be free to every Subject to sell, dispose, or employ his Goods, as him listeth, &c. And if any Person shall make Provision for the King, Queen, or their Children, as aforesaid, or impress, or take any Carriages or other Things, under Colour of any Warrant, contrary to the Intent hereof, it shall be lawful for the Justices of Peace, or such two, or one of them, as dwell near, and to the Constables, where such Occasion shall happen, at the Request of the Party grieved, to commit the Offender till the next Sessions, there to be proceeded against for the same.: But by 13. 14. Ge. 2. 20. which has been often continued by subsequent Statutes, the Officers of the Navy may press Carriages for the Use of the Navy and Ordnance, according to certain Regulations.

CH A P. XLVIII.

Of Felonies by Soldiers and Mariners.

Offences by Soldiers and Mariners made Felony by Statute, are of three Kinds,

- 1 Wandring without a Testimonial.
- 2 Departing from the King's Service without Licence.
- 3 Destroying a Ship.

SECT. 1. And First, by 39 El. 17. *All idle and wandering Soldiers, or Mariners, or idle Persons, which shall wander as such, shall settle themselves in some Service, Labour, or other lawful Course of Life, without Wandring, or otherwise repair to their Place of Birth, or to their Dwelling-place, if they have any, and there remain by Taking themselves to some lawful Trade or Course of Life, as aforesaid, upon Pain of Suffering as in Case of Felony without Clergy.*

SECT. 2. *And every idle and wandring Soldier or Mariner, who coming from his Captain from the Seas, or from beyond the Seas, shall not have a Testimonial under the Hand of a Justice of the Peace of or near the Place, where he landed, setting down the Place and Time of his Landing, and the Place of his Dwelling or Birth, to which he is to pass, and a convenient Time for his Pas-*

Of Felonies by Soldiers and Mariners.

sage, or having such Testimonial, shall willfully exceed the Time therein limited; and also as well every such idle and wandring Soldier or Mariner, as every other idle Person wandring as such, who shall forge any such Testimonial, or have with him or them any such forg'd Testimonial, knowing the same to be forg'd, shall suffer as afore-said.

SECT. 3. And Justices of Assize, Goal, Delivery, or Peace, &c. may hear and determine such Offences, and execute the Offender, except some honest Freeholder, &c. will be content to take him into his Service for one whole Year, and be bound by Recognizance of ten Pounds to keep such Person for one whole Year, and bring him to the next Sessions, &c. next after the said Year. And if any such Person retained shall depart within the Year without Licence, he shall be judg'd, &c. as a Felon without Clergy.

SECT. 4. But if any such idle and wandring Person fall sick by the way, so that he cannot travel to his Journey's End within the Time limited in his Testimonial, he shall not be within the Danger of the Statute, so as he settle himself, &c. after Recovery.

SECT. 5. If such Soldier or Mariner repairing to his Place of Birth cannot get work, he shall be set to Work by two Justices of Peace, &c. and for Want thereof the said two Justices shall tax the whole Hundred for his Relief.

SECT. 6. Also a Soldier or Mariner coming from beyond Sea may be licenc'd to ask Relief while he goes the Road mentioned in his Licence, &c.

Sect. 7. Secondly, A Soldier's Leaving the King's Service without Licence was made Felony by 18 H. 6. 19. but this is now of little Use, because the Method of retaining Soldiers therein refer'd to is not in Use. But by 7 H. 7. 1. And 3 H. 8. 5. still in Force, If any Soldier being no Captain immediately retained with the King, who shall be in Wages, and retained, or take any Prest to serve the King upon the Sea, or on Land beyond Sea, depart the Service without his Captain's Licence, he shall suffer as a Felon without Clergy, and Justices of Peace in every County, where such Offenders be taken, shall enquire of, hear and determine their Offences, as though they were done in the same County. And by 2 Ed. 6. 2. If any Soldier serving the King in his Wars, &c. depart without Licence of the Lieutenant, or Admiral, or Captain, &c. with Bocky or otherwise, being in the Enemy's Country, or elsewhere in the King's Service, or out of any Garrison, where he shall be appointed to serve, he shall be judged a Felon without Clergy, and the Justices of Peace, where such Offender shall be taken, may enquire of, and determine the Offence, &c.

S. 7.

S. 8.

S. 8.

S. 9.

Sect. 8. Thirdly, By 22 & 23 Ca. 2. 11. and Annæ 9. If any Captain, Master, Mariner, or other Officer, belonging to any Ship, shall wilfully cast away, burn, or destroy the same, or procure it to be done, to the Prejudice of the Owner, or of any Merchant, that shall load Goods thereon, he shall suffer as a Felon without Clergy. And if the Offence were committed in the Admiral's Jurisdiction, he shall be try'd according to 28 H. 8.

S. 10.
Vid. supr.
Ch. 37.
S. 2.

C H A P. XLIX.

Of Felonies by Hunters.

BY 1 H. 7. 7. it is recited, That many great Outrages, &c. had often been occasion'd by Persons in great Numbers with painted Faces, Visards, and otherwise disguised, and riotously and in manner of War arrayed Hunting as well by Night as by Day; and thereupon it is enacted, That on Information of any such unlawful Hunting by Night, or with painted Faces, to any of the King's Council, or to any Justice of the Peace, of any Person suspected thereof, such Counsellor or Justice may make a Warrant to arrest such Person, and may examine him of the said Hunting and Hunters; and if such Person wilfully conceal the same, such Concealment shall be Felony; and if he confess the whole Truth, then the said Offences be against the King, but Trespasts punishable at the next general Sessions of the Peace; and if any Rescous or Disobedience be made to any Person having Authority by any such Warrant, by any Person which so should be arrested, so that Execution thereof thereby be not had, the same shall be Felony: And if any Person shall be convicted of any such Hunting with painted Faces, Visards, or otherwise disguis'd, to the Intent not to be known, or of unlawful Hunting, he shall have the like Punishment, as if convicted of Felony.

C H A P.

CHAP. L.

Of Felonies by Forgers of false Deeds.

BY 5 EL. 14. If one convict or condemned of Vid. *supr.*
 Forgery or Publishing a forged Deed shall Ch. 40.
 after such Conviction or Condemnation commit S. 3.
 the like Offence, he is guilty of Felony without
 Clergy, as shall be more shewn Chap. 70.

CHAP. LI.

Of Felonies by Gaolers.

BY 14 Ed. 3. 10. If any Keeper of a Prison,
 or Under-keeper, by too great Duress of
 Imprisonment, and by Pain compell a Prisoner in
 his Ward to become an Appellor against his Will,
 he is guilty of Felony. And it is said not to
 be material, whether the Approvement be
 true or false, or the Appellee be condemn'd
 or not; but at Law this Offence was but a
 Misprision, unless the Appellee were hanged.

C H A P. II.

*Of Felonies by Transporters of
Sheep or Wool.*

3 Inf. 95. *Sect. 1.* **BY** some old Statutes, and 13 &
96. *14 Ca. 2. 18.* the Exportation
1 W. & M. of Wool was made Felony, but it is since
Sess. 1. c. reduc'd to a Misdemeanor only, subject to
32. many severe Penalties; and by 4 Geo. II.
7 & 8 W. 3. to Transportation, for non-Payment of the
cap. 28. Sum recover'd against the Offender within
9 & 10 W. three Months after the Judgment, &c.

3. c. 40.
11 & 12 W.
3. c. 10.

Sect. 2. By 8 El. 3. No Person shall bring,
deliver, send, receive, or take, or procure to be
brought, &c. into any Ship or Bottom any Rams,
Sheep or Lambs, or any manner of other Kind
of Sheep, being alive, to be convey'd out of any
of the King's Dominions, on Pain that such
Person, his Aiders, &c. shall for the first Offence
forfeit his Goods, &c. and suffer a Year's Impri-
sonment, and at the Years End have his left Hand
cut off, &c. and for the second Offence be adjudged
a Felon, &c.

CHAP. LIII.

Of Felonies by Servants.

IT is recited by 33 H. 6. 1. That divers Household Servants of Persons of good Degree had then of late shortly after the Death of their Masters riotously taken and spoiled the Goods, which were their said Masters at their Death. And thereupon it is enacted, That after Information to the Chancellor by the Executors of such Person or two of them of such Riot, &c. the Chancellor by the Advice of the two chief Justices and chief Baron, or two of them, may make out Writs, commanding Proclamation to be made for the Offenders to appear in the King's Bench at such a Day, whereon if they make Default, they shall be attainted of Felony; but if they appear, they shall be committed or bailed 'till they have answer'd the Actions of the said Executor, &c.

CHAP. LIV.

Of Felonies by Egyptians.

BY 1 & 2 Ph. & Mar. 4. all outlandish Persons, call'd Egyptians, of the Age of thirteen Years, who shall be transported into this Realm, and continue in the same one Month; And by 5 El. 20. all Persons of the Age of four-

teen Years, who shall be found in any Company of Vagabonds, commonly called or calling themselves Egyptians, or counterfeiting, transforming or disguising themselves by Apparel, Speech or other Behaviour like unto such Vagabonds, and shall continue in the same, either at one or several times, by the Space of one Month shall suffer as Felons without Clergy.

C H A P. LV.

Of Felonies by Cutters of Pow-dike.

IT is recited by 22 H. 8. 11. which was repeal'd by 1 Ed. 6. and reviv'd by 2 & 3 Ph. and Mar. 19. That divers Persons had maliciously at sundry times cut down and broken up divers Parts of the new Pow-dike in Marshland in Northfolk, and the broken Dike, otherwise called Oldfelde-Dike, by Marshland, in the Isle of Ely, by reason whereof the Country had been drown'd, &c. And thereupon it is enacted, That every such perverse and malicious Cutting down and Breaking up of any Part or Parts of the said Dikes, or of any other Bank, being Parcel of the Rind and uttermost Part of Marshland aforesaid, by any Person otherwise, than in Working thereon, for the Repairing, Fortifying and Amending of the same, shall be Felony, and the Justices of Peace at their Sessions shall enquire thereof, &c.

C H A P. LVI.

Of Felonies by Trespassers on the Borders and Rioters.

Sect. I. **I**T is recited by 43 El. 13. *That then of late Years many Persons dwelling in Cumberland, Westmorland, and the Bishoprik of Durham had been taken and carried away as Prisoners, and kept barbarously, untill they had been redem'd by great Ransoms; and also that there had been many Incursions, Robberies, and Burning and Spoiling of Towns within the said Counties, so that divers had been enforced to pay a certain Consideration, commonly called Black Male, to divers inhabiting on or near the Borders, being Men of Name, and allied to divers in those Parts commonly known to be great Robbers, to the End thereby to be protected from the Danger of such, as used to rob in those Parts; and thereupon it is enacted, That whosoever shall without good Warrant take and carry any Subject against his Will out of the said Counties, or detain, force, or imprison him, as a Prisoner to ransom him, or to make a Prey of his Person or Goods; or whosoever shall be privy, consenting or assisting unto, or procure any such Taking, Detaining or Carrying away; or whosoever shall take, receive, or carry, or give any such Consideration, called Black Male, for such Protection as aforesaid, and shall be convicted, &c. shall be adjudged a Felon without Clergy.*

Sect.

Of Felonies by Bankrupts.

Señ. 2. Also Rioters to the Number of Twelve, continuing assembled one Hour after Proclamation made to disperse them, are guilty of Felony by 1 *Geo. 5.* as shall be more fully shewn Ch. 65.

For the Suppression of Robbers called *Moss-Troopers*, see 13 and 14 *Ca. 2. 22.* which is continued by 12 *Annæ* for eleven Years, and from thence to the End of the first Sessions of the next Parliament.

CHAP. LVII.

Of Felonies by Bankrupts.

Señ. 1. **BY** 4 *Geo. 24.* If any Person, who shall become a Bankrupt, and against whom a Commission of Bankrupt shall be awarded, whereupon such Person shall be declared a Bankrupt, shall not within thirty Days after Notice thereof, in Writing left at his usual Abode, and Notice in the Gazette, that such Commission hath been issued forth, and of the Time and Place of meeting of the Commissioners, surrender himself to the said Commissioners, and submit to be examined from Time to Time on Oath, or on his solemn Affirmation, (if a Quaker) and in all Things conform to the several Statutes concerning Bankrupts, and also upon his Examination fully and truly disclose how, and to whom, and upon what Consideration he hath dispos'd his Effects or Estate, and all Books, Papers and Writings relating thereto, &c. and also deliver up the same to the said Commissioners,

missioners, necessary wearing Apparel only excepted; or if any Bankrupt or other Person by his Order, Consent or Privity shall remove, carry away, conceal, destroy or embezzle any of the Effects, whereof he, or any Person in Trust for him, was possess'd at the Time of the Bankruptcy, or during its Continuance to the Value of twenty Pounds, or any Books of Accounts, or Papers, or Writings relating thereto, to the Intent to defraud their Creditors, every such Person shall be adjudged a Felon without Clergy, &c. But the Lord Chancellor may enlarge the Time for such Persons surrendering themselves, and discovering their Estates, &c. for any Time he shall think fit, not exceeding sixty Days, so as such Order for so enlarging the Time be made five Days before the Time, on which such Persons were so to surrender themselves, &c.

C H A P. LVIII.

Of Felony by Counterfeiters of Bank-notes, Exchequer-Bills, Stamps, South-Sea-Bonds, Lottery-Orders, &c.

SECT. I. **BY** 8 & 9 W. 3. 19. Par. 36. The Forging the Common Seal of the Bank, or any sealed Bank-Bill, in the Name of the Governour and Company, for the Payment of Money, or any Bank-Note, signed for the said Governor and Company; or the Altering or Raising

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ment,
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ing any Indorsement on any Bank-Bill or Note, is Felony without Clergy.

Sect. 2. By 7 & 8 W. 3. 31. Par. 78. and 8. 9 W. 3. 23. If any Person shall counterfeit any such Bill of Credit, as by the said Statutes the Commissioners of the Treasury were authorized to issue out, or shall tender in Payment any forged Bill of Credit, or demand Money thereupon at the Exchequer, knowing the same to be forged, and with Intention to defraud His Majesty, or any other Person, he shall be adjudged a Felon without Clergy.

Sect. 3. By 5 Anne 7. and 7 Anne 7. and 9 Anne 7. and 1 George 7. If any Person shall forge any Exchequer-Bill, to be issued by Virtue of those Statutes, or any Indorsement thereon, or tender in Payment any such forg'd Bill, or with such forg'd Indorsement, or Demand to have the same exchange'd for Money by the Bank, (knowing the Bill so tendered, &c. to be forg'd) and with Intention to defraud the Queen or any other Person, he shall be adjudged a Felon without Clergy.

Sect. 4. By 9. 10 W. 3. 25. Par. 59. If any Person shall counterfeit any Stamp or Mark to resemble any Stamp or Mark, made or us'd in Pursuance of that Act, or shall counterfeit or resemble the Impression of the same upon Vellum, Parchment or Paper, to defraud the King of his Duty on Vellum, Parchment or Paper, or shall utter, vend or sell Vellum, Parchment or Paper with such counterfeit Mark, knowing the same to be counterfeit, he shall be adjudg'd a Felon without Clergy.

Sect. 5. And the like is enacted by 10 Anne 19 and 26. and by 12 Ann. 9 and 19. in Relation to the Stamps to be provided in Pursuance of those Statutes; and farther,

That

That those, who shall privately and fraudulently use any Stamp or Mark to defraud her Majesty of the Duties by the said Acts granted, be shall be in like manner guilty.

Sett. 6. By 9 Ann. 21. If any Person shall forge the Common Seal of the South-Sea Company, or forge, or alter any Bond under the Common Seal of the said Company, or shall offer to dispose of, or pay away any such forged, counterfeited or altered Bond (knowing the same to be such.) or shall demand the Money therein contained, or pretended to be due thereon, or any Part thereof of any Person, knowing the same to be forged, &c. he shall be adjudged a Felon without Clergy.

Sett. 7. By 12 Ann. 2. If any Person shall forge any Lottery-Order made in Pursuance of 9 Ann. 6. or 23. or 10 Ann. 19 or 26. or alter the Number or principal Sum of any such Order, or counterfeit the Hand of any Person to such Order, thereby to procure a fraudulent Assignment, or sell any such Order, knowing it to be forged, or knowing that the Owner's Name is forged, in Order to procure such fraudulent Assignment, he shall suffer as a Felon without Clergy.

CHAP. LIX.

Of Misprision of Felony.

Offences more immediately against the Subject not capital are either Misprision of Felony, or inferior Offences.

Sett.

S. 1, 2, 3.
supra c.
20.

Sect. 1. It is said, That Misprision of Felony is included in every Felony, and may be proceeded against as such only, if the King please, but generally it is taken for the Concealment of Felony, or the Procuring such Concealment, and is punishable at the Common Law by Fine and Imprisonment. And by *Westm. 1. 9.* If the Sheriff, Coroner, or any other Bailiff, for Reward, Pray'r or Fear, &c. conceal, consent, or procure to conceal the Felonies done in their Liberties, or otherwise will not attack nor arrest such Felons, or otherwise will not do their Duty for Favour to such Misdoers, they shall have one Years Imprisonment, and after make a grievous Fine, if they have wherewith, and if not, shall have three Years Imprisonment.

Sect. 2. By 3 H. 7. 1. Justices of the Peace may take by their Discretion an Inquest, whereof every Man shall have Tenements to the yearly Value of forty Shillings, to enquire of the Concealments of other Inquests taken before them, and afore other, of such Matters as are to be enquired and presented before Justices of the Peace, whereof Complaint shall be made by Bill, within Franchise, or without; and if any such Concealment be found within the Year, every Person shall be amerced by the Discretion of the said Justices in Sessions.

S. 5.

Sect. 3. Theftbote is, where one, who knows of a Felony, takes his Goods again, or other Amends not to prosecute, and was antiently punish'd as Felony; but at this Day by Ransom and Imprisonment only, unless it were accompanied with some Degree of Maintenance given to the Felon, which makes the Party an Accessory after the Fact.

Sect.

Sect. 4. It is no Offence at all to take again one's own Goods, which have been stolen, without shewing any Favour to the Offender.

S. 7.

C H A P. LX.

Of Surety of the Peace.

INferior Offences more immediately against the Subject either amount to an actual Disturbance of the Peace, or do not.

Surety of the Peace ex Officio;

But before I descend to either of these in particular, I shall first shew what Security may be had for the Preservation of the Peace, before it is broken.

Sect. 1. Any Justice of the Peace may in his Discretion bind all those to the Peace, who in his Presence shall make an Affray, or shall threaten to beat any Person, or shall contend with hot Words, or shall go about with unusual Weapons or Attendance, to the Terrour of the People; and also all Persons known by him to be common Barrators; and all Persons brought before him by a Constable for a Breach of the Peace, in the Presence of such Constable; and all Persons, who having been bound to the Peace, shall be convicted of having forfeited their Recognizance.

S. 1.

Sect. 2. It seems agreed, That an Alien, or a Person attainted of Treason, &c. or a Husband in just Fear from his Wife, or a Wife threatned to be beaten outrageously

Surety of the Peace at the Instance of the Party, by whom demandable.

S. 2.

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by her Husband, and all other Persons whatsoever under the King's Protection, being of sane Memory, may demand Sureties of the Peace, except Jews, Pagans, and Persons attainted of *Præmunire*, as to whose Right some have made a Question.

S. 3.

S. 5.
Against whom.

Sect. 3. Surety of the Peace may be granted by a Justice of the Peace against any Person whatsoever of sane Memory, and under the Degree of Nobility, whether he be a Magistrate or private Person of full Age, or under Age, &c. But Infants and Feme Coverts ought not to be bound themselves, but to find Security by their Friends; and the safest Way of proceeding against a Peer is by Complaint to the Chancery, or King's Bench.

S. 6.
For what Cause.

S. 7.

Sect. 4. Where-ever a Person has just Cause to fear that another will burn his House, or do him corporal Hurt, as by Killing or Beating or (as it seems the better Opinion) by unlawfully imprisoning him; or that he will procure others to do him such Mischief, he may demand the Peace against him; and every Justice of Peace is bound to grant it on the Party's giving him Satisfaction on Oath, That he is under such Fear, and has just Cause to be so from the others having threatened, or lain in Wait to beat him, and that he doth not demand it for Malice or Vexation.

In what Manner by the Chancery, or King's Bench.

Sect. 5. By 21 Jac. 1. 8. All Process for the Peace or Behaviour to be awarded out of the Chancery, or King's Bench, against any Person whatsoever, by the Prosecution of any Person whatsoever, shall be void, unless it shall be so awarded upon Motion first made in open Court, and

and upon Declaration in writing upon Oath of the Cause, for which it shall be awarded: And unless such Motion and Declaration be mention'd to be made upon the Back of the Writ, the said Writing there to be entred of Record; and if it shall afterwards appear to the Court, that any of the Causes express'd in such Writing be untrue, the Party griev'd shall have his Costs and Damages awarded by the Court, and the Offender shall be committed 'till he pay them.

Sect. 6. If the Person to be bound be in the Presence of the Justice of the Peace. he may be immediately committed by him, unless he offer Sureties; but if he be absent, he cannot be committed without a Warrant from a Justice of Peace, which Warrant ought to be under Seal, and shew the Cause, for which it is granted, and at whose Suit, and may be directed to any indifferent Person.

In what Manner by Justices of Peace.

S. 9.

Sect. 7. Such Warrant can be executed only by the Persons, to whom it is directed, or some of them, unless it be directed to the Sheriff, who may either by Parol, or by Precept in Writing authorize an Officer sworn and known to serve it, but cannot empower any other Person without a Precept in Writing.

Warrant how execut- ed.

S. 11.

Sect. 8. If it be made in common Form directing the Officer to cause the Party to come before some Justice of Peace, to find Surety, &c. and on his Refusal to convey him to Prison without any further Warrant, untill he shall willingly do the same, &c. the Officer, before he makes any Arrest, ought to require the Party to go with him, and find Surety, &c. but upon his Re-

S. 12.

fulal to do either; it is said by some, he may carry him to Gaol without any farther Warrant.

S. 13. Sect. 9. If the Warrant be special, to bring the Party before the Justice, who made it, the Officer ought not to carry him before any other, but if it be general, to bring him before any Justice of Peace, the Officer may bring him before what Justice he pleases.

*How Process
for the Peace
may be su-
perseded.*

S. 14.

Sect. 10. He, who fears that Surety of the Peace will be demanded against him, may, on Finding Sureties before any Justice of the Peace of the same County, either before or after a Warrant is issued against him, have a *Supersedeas* from such Justice, which shall discharge him from an Arrest from any other Justice, at the Suit of the Party, for whose Security he hath given such Surety: And before 21 Jac. 1. 8. it was a common Practice to get Writs of *supersedeas* of this Kind from the Chancery or King's Bench, upon insufficient Sureties, &c. but by that Statute, *All Writs of Supersedeas out of any of the said Courts shall be void, unless granted upon Motion, and upon such Sureties, as shall appear on Oath to be assess'd at five Pounds Lands, or ten Pounds in Goods, &c. and unless it shall first appear to the Court, from which such Supersedeas is desired, that the Process of the Peace, or Behaviour is prosecuted against the Party bona fide by some Party grieved, in the same Court.*

S. 15.
*The Form of
the Recogni-
zance.*

Sect. 11. It is holden, that a Justice of the Peace may in his Discretion regulate the Number and Sufficiency of the Sureties; and also the Sum and Time, for which they shall

shall be bound; and that he may take the Recognizance for a Year, or for the Party's Life, or without expressing any Time at all, (which shall be intended for his Life) or without fixing any Time or Place for his Appearance, or without binding him to keep it as to any other Person, beside the Party grieved: But it seems the more usual and safe Method to take it for the Party's Appearance at the next Sessions for the Peace, and for his keeping the Peace the mean while, as to the King and all his liege People, and in particular as to the Person that complains.

S. 16.

Sett. 12. Such a Recognizance cannot be pardoned or released by the King, before it is forfeited, because the Subject hath an Interest in it: Neither are the Sureties discharged by their Death; but it may be discharg'd by the Demise of the King, in whose Reign it was taken, or by the Death of the principal Party bound by it, if it were not forfeited before: And, according to some Opinions, it may be discharged by the Release of the Prosecutor; but this seems questionable, because the Recognizance is not to him, but to the King. However such a Release will be a good Inducement to the Court, to whom such Recognizance shall be certified to discharge it in their Discretion: And so also will the Non-appearance of the Party, in order to pray its Continuance.

How the Recognizance may be discharged.

S. 17.

Sett. 13. A Recognizance for the Peace taken before a Justice of the Peace, on a Complaint before him, must be certified, or brought to the next Sessions of the Peace,

How the Recognizance is to be proceeded upon.

- S. 18. by Force of 3 H. 7. 1. That the Party bound may be called, &c. and by the same Statute, *If the Party then make Default, the same shall be recorded, and the Recognizance with the Record of the Default shall be certified into the Chancery, King's Bench, or Exchequer.* But it seems that the Sessions is not peremptorily bound to record such a Default, but may equitably consider the Reasonableness of the Party's Excuse. Also it is said, that the Sessions cannot otherwise proceed against the Party, or his Sureties, for any Forfeiture of the Recognizance, but only by Removing it into one of the Courts of Westminster Hall, which shall proceed thereon by *Scire facias*, &c. And it is said, that in such *Scire facias* the Fact alledged for a Breach may be laid as having been done *contra pacem*, without using the Words *vi & armis*.
- S. 19.

How the Recognizance may be forfeited.

- S. 20. *Self.* 14. Such Recognizance may be forfeited not only by any actual unlawful Violence done to the Person of another by the Party, that was bound, or by others thro' his Procurement, but also, according to some Opinions, by any Treason against the Person of the King, and also by any unlawful Assembly *in terrorem populi*, and even by Words directly tending to a Breach of the Peace; as by Challenging one to fight, or in his Presence threatening to beat him, &c.
- S. 21.
- S. 22. *Self.* 15. But it shall not be forfeited by bare Words of Heat or Choler; as calling a Man Knave, Rascal, or Drunkard, &c. nor by a bare Trespass to another's Possessions, without any Violence to his
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his Person; nor, as some say, by an Hurt done to another thro' mere Negligence or Mischance: As by a Gun unwarily discharged by a Soldier at his Exercise; nor by a Hurt done to another at Wrestling, or Cudgels, or such like Sports innocently undertaken for the Trial and Improvement of the Party's Activity and Courage. But 'tis said that it is in Strictness forfeited by a Wound given another in Fighting with naked Swords, because no Consent can make so dangerous a Diversion lawful.

S. 27.

S. 26.

Sec. 16. There are some actual Assaults on the Person of another, which do not forfeit such Recognizance; as where an Officer having a Warrant against a Man, who will not submit to him, beats or wounds him in the Attempt to take him; or where a Parent reasonably chastises his Son, or a Master his Servant, or a Schoolmaster his Scholar, or a Gaoler his Prisoner; or as some say, a Husband his Wife; or where one in a proper Manner confines and beats a Friend, who is mad, &c. or where one forces a Sword from another, who threatens to kill a Man with it; or where one gently lays his Hands on another, and stays him from Inciting a Dog upon a Man; or where I beat one (without wounding him, or throwing at him a dangerous Weapon) who wrongfully endeavours with Violence to dispossess me of my Lands or Goods, and will not desist upon my Laying my Hands gently on him, & disturbing him; or where a Man beats one, who attempts to kill any other;

S. 23.

- or where a Man threatens to kill one, who puts him in Fear of Death in such a Place, where he cannot safely fly from him; or where one imprisons those, whom he sees fighting, till the Heat be over; or where a Man beats, or as some say, wounds or maims one, who makes an Assault upon his Person, or that of his Wife, Parent, Child, or Master; or as some say, where one beats another in Defence of his Servant: But it is said, that a Servant cannot justify Beating another in Defence of his Master's Son, tho' commanded by the Master; nor a Tenant in Defence of his Landlord.
- S. 22.
- S. 61.

C H A P. XLI.

Of Surety for the good Behaviour.

Seff. 1. **BY** 34 Ed. 3. 1. *Justices of the Peace are to restrain Offenders, Rioters, and all other Barrators, and to pursue, take, and arrest them, according to their Offence, and to cause them to be duly punished according to the Laws of the Realm, and according to that, which to them shall seem best, according to their Discretions; and also to enquire of all, that have been Pillors and Robbers beyond Sea, and are now come home again, and go wandring, and will not labour; and to arrest all those, that they shall find by Indictment, or by Suspicion; and to put them in Prison, and to take of all them, that*

Of Surety for the good Behaviour.

153

be not of good Fame, sufficient Surety for their good Behaviour towards the King and his People, and the others duly to punish, to the Intent that the People be not by such Rioters troubled, nor the Peace blemished, &c.

Sett. 2. This Statute being penned in such general Words seems in a great Measure to have left it to the Discretion of Justices of Peace, to determine what Persons are fit to be bound to their good Behaviour, and consequently seems to empower them not only to bind over those, who appear to be notoriously troublesome, and likely to break the publick Peace, as Evesdroppers, &c. but also those, who are publickly scandalous, or Contemners of Justice, &c. as Haunters of Bawdy-houses, or Keepers of lewd Women in their own Houses, common Drunkards, or those, that sleep in the Day, and go abroad in the Night; or such as keep suspicious Company; or such as are generally suspected as Robbers, &c. or such as speak contemptuous Words of inferiour Magistrates, as Justices of Peace, or Majors, &c. not being in the actual Execution of their Offices; or of inferiour Officers of Justice, as Constables, &c. being in the actual Execution of their Office: But it seems that rash, quarelsome, or unmannerly Words, spoken by one private Person to another, unless they directly tend to a Breach of the Peace, are not a sufficient Cause to bind a Man to his good Behaviour.

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- Señ. 3.* It hath been laid down as a general Rule, that whatsoever will be a good Cause to bind a Man to the Behaviour, will also forfeit a Recognizance for it; but this is deny'd by others, and does not seem to be easily maintainable, since Persons may be bound to their Behaviour on probable Causes of Suspicion of their being likely to be Rogues, as from their keeping suspicious Company; or spending much Money idly, without any visible Means of coming to it honestly; and yet it seems hard to make any such general Charge against a Man a Forfeiture of his Recognizance: But it seems that such a Recognizance shall not only be forfeited for such actual Breaches of the Peace, for which a Recognizance for the Peace may be forfeited, but also for some others; as for going arm'd with great Numbers, to the Terror of the People; or speaking Words tending to Sedition, &c. and in general, for all such actual Misdemeanors, as are intended to be prevented by such a Recognizance.
- S. 4.*
- S. 6.*

C H A P. LXII.

Of Assaults and Batteries.

Offences amounting to an actual Disturbance of the Peace, are either

1. Such, as may be committed by one or two Persons.
2. Such, as require a greater Number:

Those, which may be committed by one or two Persons, are

1. Assaults and Batteries.
2. Affrays.
3. Forcible Entries and Detainers.

Sect. 1. **I**T seems that an Assault is an Attempt or Offer to do a corporal Hurt to another, as by striking at him, or presenting a Gun at him at such a Distance, at which it will carry, or pointing a Pitch-fork at him within the Reach of it; or holding up one's Fist at him, or any such like Act done in an angry, threatening Manner: And from hence it follows, that one charg'd with an Assault and Battery may be found guilty of the Assault, and acquitted of the Battery. But it seems agreed at this Day, that no Words can amount to an Assault.

Sect. 2. It seems that any Injury whatsoever to the Person of a Man in an angry, revengeful, rude, or insolent Manner is a Battery, as Spitting in his Face, or jostling him out of the Way, or any way touching him in Anger: But gently to lay one's Hand on a Man, whom an Officer has a Warrant to arrest, and to tell the Officer, This is the Man he wants, is no Battery.

Sect. 3. Having shewn already Chap. 60. *Sect. 15.* what Assaults and Batteries are justifiable, I shall only add in this Place, that he, who has such a Justification, must plead it specially to an Action, but may give it in Evidence on the general Issue to an Indictment.

C H A P. LXIII.

Of Affrays.

What an Affray.

- Sect. 1.* **T**HE Word *Affray* is deriv'd from the French Word *Effrair* to terrify, and signifies a publick Offence to the Terror of the People, and is enquirable in the Leet, as a common Nuisance: But an Assault in a private Place, out of the Hearing or Seeing of any, except the Parties concern'd, seems to be no Affray. Also it is said, that no Words whatsoever can amount to an Affray, and that no one can justify laying his Hands on those, who quarrel with Words, without Blows,
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Blows, unless he be a Constable, who at the Request of the Party grieved may carry one, who threatens to beat another, before a Justice of Peace, in Order to find Sureties.

Sect. 2. 'Tis a high Offence to challenge *Challenge.* another by Word or Letter to a Duel, or *S. 3. 21.* to endeavour to provoke another to send a Challenge, as by dispersing Letters to that Purpose, full of Reflections, and insinuating a Desire to fight, or to be the Messenger of such a Challenge.

Sect. 3. There may be an Affray, where there is no actual Violence; as where a Man arms himself with dangerous and unusual Weapons, in such a Manner, as is apt to cause a Terrour to the People, which was an Offence at Common Law. And by 2 *Ed. 3. 3.* No Man except the King's Servants in his Presence, and his Ministers in executing his Precepts, or of their Office, and such as assist them; and also on a Cry made for Arms to keep the Peace, and the same in such Places, where such Acts happen, shall come before the Justices, or other of the King's Ministers doing their Office without Force and Arms; nor bring Force in Affray of Peace, nor go, nor ride arm'd, on Pain to forfeit their Armour, and their Bodies to Prison: And that the King's Justices in their Presence, Sheriffs, and other Ministers in their Bailiwicks, Lords of Franchises, and their Bailiffs, and Mayors, and Bailiffs in Cities and Burroughs, and Constables, &c within their respective Jurisdictions, shall have Power to execute this Act, &c. *Wearing Armour.*

Sect. 4. Any Person impower'd to execute this Statute may proceed either *ex officio,*

- S. 5.** *ficio*, or by Force of a Writ from Chancery; and if he find any one in Arms contrary to the Statute, may seize the Arms, and commit the Offender; and ought to make a Record of his Proceedings, and certify it into the Exchequer, where he proceeds *ex officio*, and into Chancery, where he acts by Writ.

- S. 6.** *Sect. 5.* Also where a Man proceeds by Writ, he may not only imprison those, whom he finds offending in his own View, but also all those, who shall be found by Inquest taken before him to have so offended. And *Quare*, whether he may not do the same, where he proceeds *ex Officio*.

- S. 7.** *Sect. 6.* An Under-Sheriff may execute such Writ directed to the Sheriff, unless it name him by his proper Name, and command him to act in his proper Person.

- S. 8.** *Sect. 7.* It is no Offence to assemble my Friends in the Defence of my House against those, who threaten to do me a Violence in it; for my House is my Castle. Neither is it any Offence to arm my self in order to suppress dangerous Rioters, Rebels, or Enemies, for the Publick Good requires it.
- S. 10.** Neither doth it seem any Offence for a Man to arm himself with a privy Coat of Mail, because it is not to the Terrour of the People: And for the same Reason it seems no Offence for Gentlemen to ride with such Servants or Weapons, for their Ornament or Defence, which the Fashion of the Country has made common. But
- S. 9.** if a Man wear any Armour, to the Terrour of the People, within the Meaning of the Statute,

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Statute, it is no Excuse that he does it for the Safety of his Person against one, who threatned to assault him, &c. S. 8.

Sect. 8. Any private Person, who sees others fighting, may stop those, whom he shall see coming to join either Party; also he may part the Combatants, and stay them, till the Heat be over, and then deliver them to the Constable, who may carry them before a Justice of Peace, in order to their Finding Sureties of the Peace. And it seems that, if such private Person in so doing unavoidably hurt either Party, he may justify it; and if he receive any Hurt himself, he shall have his Action. *Affray suppress'd by private Persons.* S. 11, 17.

Sect. 9. And if either Party be dangerously wounded in such an Affray, a Stander by may justify even wounding the other, if he could not otherwise take him, for he is bound to arrest such Offender, on Pain of Fine, and Imprisonment, in Order to bring him before a Justice of Peace, &c. S. 12. Book 2. C. 12. S. 1.

Sect. 10. A Constable is not only impower'd, as all private Persons are, to part an Affray in his Presence, but is bound at his Peril to endeavour it, not only by doing his utmost himself, but also by demanding the Assistance of others, which they are bound to give him under Pain of Fine and Imprisonment. And it is said, that if he see Persons actually engaged in an Affray (whether the Violence were done or offer'd to another, or even to himself) or see them upon the very Point of entering upon an Affray; as where one threatens to beat another, &c. he may either carry the Offender before a Justice of Peace, in Order to

By Constables.

S. 3.

S. 14.

S. 15.

to his finding Sureties for the Peace, &c. or may imprison him himself a reasonable Time, till the Heat be over, and afterwards detain him, till he give such Surety by Bond:

S. 14. But he seems to have no Power to commit the Offender in any other Manner, or for any other Purpose, for he cannot commit him to Gaol, till he shall be punish'd: Neither ought he to lay Hands on those, who barely contend with Words, without any Threats of personal Hurt; but all he can do in such Case, is to command them, under Pain of Imprisonment, not to fight.

Señt. 11. If an Affray be in a House, the

S. 16. Constable may break open the Doors to preserve the Peace, and if Affrayers fly to a House, and he freshly follow, he may break open the Doors to take them.

Señt. 12. But he cannot of his own Authority compell a Man to find Sureties, who is deliver'd into his Hands, as having broken the Peace in his Absence, but ought to carry him before a Justice of the Peace: Neither can he arrest a Man for an Affray out of his View without Warrant from a Justice of Peace, unless a Felony were done, or likely to be done.

S. 17.

*By Justices
of Peace.*

Señt. 13. A Justice of Peace is not only authoriz'd and requir'd to do all those Things for the Suppressing of an Affray, which a private Man or Constable may or ought to do, but may also by Warrant, but not without, authorize the bringing an Affrayer before him, in Order to find Sureties, &c. Also he hath a discretionary Power to commit or bail one, who has dangerously wounded another, till the Year and Day

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be past; but if there be apparent Danger of Life, he ought to be extreamly cautious how he takes Bail.

Sect. 14. All Affrays are punishable by Fine and Imprisonment, the Measure whereof is to be regulated by the Discretion of the Judges, according to the Circumstances of the Case, and receive a high Aggravation when committed deliberately, and accompanied with apparent Danger of Life; as where Persons coolly engage in a set Duel, which carries with it a downright Affront against the Justice of the Nation; as putting Men under a Necessity of righting themselves: Also they may receive an Aggravation from the Persons against whom, and the Places and Times, wherein they were committed, as being done against Officers of Justice, in the Execution of their Offices, or in the King's Courts, or in a Church, &c.

Affrays how punish'd and aggravated.

S. 21.

S. 22.

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Sect. 15. By 5 & 6 Ed. 6. 4. If any one shall by Words only quarrel, chide, or brawl in any Church or Church-yard, the Ordinary may on Proof by two Witnesses suspend the Offender, if a Lay-man ab ingressu Ecclesie, and if a Clerk, from the Ministration of his Office, so long as he shall think meet. And if any Person (though assaulted first) shall smite, or lay any violent Hands upon any other in a Church or Church-yard (which Words include not those, who whip Boys for playing in the Church, or pull off the Hats of those, who obstinately refuse to take them off themselves, or gently lay their Hands on those, who disturb the Divine Service, and turn them out of the Church) the Offender shall ipso facto be

Quarrels and Affrays in the Church, &c.

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deemed excommunicate, and be excluded from the Fellowship of Christ's Congregation. But there must be either a precedent Conviction at Law, which is to be transmitted to the Ordinary, or else the Excommunication must be declared in the Spiritual Court, on proper Proof of the Offence there.

Sect. 16. And if any Person shall maliciously strike another with any Weapon in any Church or Church-yard, or shall draw any Weapon in any Church, or Church-yard, to the Intent to strike therewith, and shall be convicted thereof by Verdict, Confession or two Witnesses, before the Justices of Assize, of Oyer, or Terminer, or Sessions of the Peace, such Offender shall be adjudged to have one of his Ears cut off, and besides shall stand ipso facto excommunicate, as aforesaid.

S. 29.

Sect. 17. And by 1 Mar. Sect. 2. Ch. 3. If any one, of his own Authority, shall willingly, and of Purpose, by open Word or Deed maliciously or contemptuously molest, disturb, or trouble, or by any other unlawful Ways, disquiet, or misuse any Preacher, licenced or authoriz'd to preach, by the Queen, or by any Bishop or University of this Realm, or otherwise lawfully authorized or charged by Reason of any spiritual Promotion or Charge in any open Sermon, &c. Or if any Person shall maliciously, willingly or of Purpose molest, or otherwise trouble any Curate or lawful Priest preparing, ministering, or celebrating the Mass, or other such Divine Service, as was most commonly used in the last Year of King H. 8. or that at any Time after shall be set forth or authoriz'd by the Queen's Majesty (which Words extend to the present Common-Prayer, because authoriz'd by the Queen's Successors) or if any Persons shall unlawfully, &c. of their

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their own Authority pull down, deface, or otherwise break any Altar, or Crucifix in any Church, Chapel, or Church-yard, every such Offender, his Procurers or Abettors may be apprehended by any Constable or Churchwarden of the Place, or by any other Person present at the Offence, and being so apprehended, shall be brought before some Justice of the Peace, by whom they shall be committed forthwith, &c.

Sect. 18. By 1 W. and Mar. 18. Par. 19. If any one shall of Purpose maliciously or contemptuously come into any Cathedral or Parish-Church Chapel, or other Congregation permitted by that Act, and disquiet or disturb the same, or misuse any Preacher or Teacher, such Person on Proof before a Justice of Peace, by two Witnesses, shall find two Sureties, to be bound in fifty Pounds, and on Defaults thereof shall be committed till the next General or Quarter-Sessions: And being convicted there shall suffer the Penalty of twenty Pounds.

CHAP. LXIV.

Of forcible Entries and Detainers.

Sect. 1. **I**T seems that at Law a Man disseised of Lands (if he could not prevail by fair Means) might lawfully regain his Possession by Force, while his Entry continued lawful; as a Man wrongfully dispossessed of Goods may do at this Day, if the Wrong-doer refuse to redeliver

Forcible Entry whether punished by Common Law.

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Of forcible Entries and Detainers.

them. But this Method for Persons to do themselves Justice having been often abused by powerful Men, who under a Pretence of Right would often eject their weaker Neighbours, who had in Truth a better Title, to the great Disturbance of the publick Peace, it is at this Day prohibited by many Statutes, more fully set forth in the following Part of this Chapter. But even at this Day in an Action of forcible Entry grounded on these Statutes, if the Defendant make himself a Title, which is found for him, he shall be dismissed without any Inquiry concerning the Force, for the Plaintiff shall not recover Damages for an Injury occasioned by his own Wrong.

S. 3.

Sect. 2. By 2 Ed. 3. set forth more at large in the foregoing Chapter, if any Arms be made Use of to strike a Terrour into the Persons, on whom a forcible Entry is made, any Officer within the Purview of that Statute, may seize the Arms, and imprison the Offenders, but cannot restore the Possession.

S. 5.

Sect. 3. By 5 Rich. 2. 7. None shall make Entry into any Tenements, but where Entry is given by Law; and in such Case not with strong Hand, nor with Multitude of People, but only in peaceable and easy Manner. And if any be convicted of the Contrary, he shall be punished by Imprisonment, and ransomed at the King's Will.

Sect. 4. But this Statute having made no Provision against forcible Detainers, and having given no other Remedy for the Party injur'd, but only by Action or Indictment, these Defects were supplied by 15 Rich. 2. 2. which enacts, That when such forcible

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forcible Entries shall be made, and complained of to the Justices of Peace, or to any of them, such Justices or Justice shall take sufficient Power of the County, and go to the Place; and if they find any, that hold such Place forcibly, after such Entry, they shall be taken and put in the next Gaol, there to abide convict by the Record of the same Justices or Justice, till they have made Fine and Ransom. And all the People of the County, as well the Sheriff as others, shall attend such Justices, and assist them to arrest such Offenders, on Pain of Fine and Imprisonment. And in the same Manner it shall be done of them, that make such forcible Entries in Benefices or Offices of Holy Church.

Sect. 5. Any one Justice of Peace may make a Record of such a forcible Holding, and such Record is not traversable, because it is made by a Justice of Peace acting not as a Minister, but as a Judge. Also the same Justice may assess the Fine; but it is said that he cannot commit the Offender, unless he do it immediately upon the Fact, or unless the Offender refuse afterwards to find Sureties for the good Behaviour.

S. 8.
Infra Ch.
65. S. 16.

Sect. 6. It is said, that if the Party complained of for a forcible Entry, out of the View of a Justice of Peace, traverse the Entry or the Force, the Justice may from the Necessity of the Case summon a Jury to try it, for otherwise he cannot proceed.

S. 8.

Sect. 7. But this Statute having given no Remedy against a forcible Detainer after a peaceful Entry; nor even against a forcible Entry and forcible Detainer, if removed before the Coming of a Justice of Peace, and having given no Power to make

Of forcible Entries and Detainers.

a Restitution; and having fixed no Pain on the Sheriff, for not obeying the Precepts of the Justices, it was farther enacted by 8 H. 6. 9. *That where any make any forcible Entry in Tenements or other Possessions, or them hold forcibly, after Complaint thereof to the Justices of Peace, or to one of them, by the Party grieved, such Justices or Justice shall cause the said Statute of Rich. 2. to be duly executed at the Costs of the Party grieved. And whether the Persons making such Entries be present or departed, the same Justices or Justice may enquire by the People of the said County, as well of them, which make such forcible Entries, as of them, which hold forcibly, and, if it be found that any doth contrary to this Statute, may cause to reseize the Tenements so entred or holden, and put the Party so put out in full Possession thereof. And when they make such Enquiries, they shall make their Warrants and Precepts to the Sheriff, to cause to come before them sufficient and indifferent Persons, dwelling next about the Lands so entred, to enquire of such Entries, whereof every Man shall have Tenements of the yearly Value of forty Shillings, above Reprises; and that the Sheriff return Issues on every of them at the Day of the first Precept 20 s. &c. And if any Sheriff, &c. do not duly execute such Precept, he shall forfeit twenty Pounds, &c. And as well the Justices aforesaid, as the Justices of Assizes, may hear and determine such Defaults of such Sheriffs, &c. And Majors and Justices of Peace, Sheriffs and Bailiffs of Cities, Towns and Burroughs having Franchise, have like Power in Relation to such Entries, &c. within their respective Liberties, as the Justices of Peace and Sheriffs have in their Counties.*

Sett.

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Sect. 8. But it is provided, That they, who ^{Three Years Possession.} keep their Possessions with Force in Tenements, whereof they or their Ancestors, or they, whose Estate they have therein, have continued their Possession by three Years or more, be not endamaged by this Statute. And by 31 El. 11. No Restitution upon any Indictment of forcible Entry or holding with Force shall be made, if the Person so indicted hath had the Occupation, or been in quiet Possession for three whole Years together next before the Day of such Indictment so found, and his Estate therein not ended, which he may allege for Stay of Restitution, and Restitution to stay till that be tried, if the other will traverse the same; and if such Allegation be tried against the Person so indicted, he shall pay such Costs and Damages to the other, as shall be assessed by the Judges or Justices, before whom the same shall be tried, &c.

Sect. 9. In the Construction of these Statutes it was holden, that if a Lessee for Years or Copyholder were ousted, and the Lessor or Lord disseised, and such Ouster and Disseisin were found in an Indictment of forcible Entry, the Court might award Restitution of Possession to such Lessee or Copyholder, which was by a necessary Consequence a Reversion of the Freehold. But it was a great Doubt, whether a Lessee for Years or Copyholder, being ousted by the Lessor or Lord, were within the Equity of Hen. 6. as to a Restitution, because the Words thereof as to this Purpose are that the Justices shall reversion the Lands, &c. which seem to imply an Ouster of an Estate of Freehold at least. But by 21 Jac. 1. 15. such Judges, or Justices, as by Reason of any

Restitution to Lessees and Copyholders.

Statute then in Force were authorized, upon Enquiry, to give Restitution of Possession to Freeholders of Tenements, entred upon or withholden by Force, shall have the same Authority, upon Indictment of such forcible Entries, or forcibly withholding, to give like Restitution to Tenants for Term of Years, Tenants by Copy of Court-

S. 17. Roll, (which Words or at least the Equity thereof seem plainly to extend to Tenants by the Verge) Guardians by Knights Service, Tenants by elegit, Statute Merchant or Staple of Tenements, which shall be entred upon by Force, or holden from them by Force. But if a Lessor

S. 17. eject his Lessee for Years, and afterwards be forcibly ousted by him, he has no Remedy for a Restitution by any of these Statutes, for he cannot have it by 8 H. 6. because he always continued seized of the Freehold. And clearly he is not within 21

S. 18. Jac. However it seems clear, that a Justice of Peace may remove the Force, and commit the Offender, &c.

What an
Entry
within
these Sta-
tutes.

Sec. 11. If one, who pretends a Title to Land, barely go over it, whether armed or unarmed, or with or without a great Number of Attendants, in his Way to the Church or Market, &c. without doing some

S. 20. Act, which may expressly or impliedly amount to a Claim, he cannot be said to make an Entry within these Statutes. But if he make a Claim with any Circumstances of Force or Terrour, he seems guilty of a

S. 21. forcible Entry within 5 and 15 Ric. 2. And all those, who accompany him, seem also in like Manner guilty, tho' they never actually entred upon the Land, and though the Posses-

Possession were never quitted by him, who S. 22.
had it at the Time of the Entry.

Sect. 12. Also all those, who claiming S. 23.
Land under a bad Title, continue in Possession after a Claim by one, who has a Right of Entry thereto, are in like Manner guilty. But a Man shall not be said of make an Entry within these Statutes, who S. 24.
barely agrees to such Entry made by another without his Privy.

Sect. 13. An Entry shall not be said to be *What Entry shall be*
forcible within these Statutes, in respect of *try shall be*
such Force only, as is implied by Law in *adjudged*
every Trespass whatsoever; but it must be *forcible.*
accompanied with some actual Violence or S. 25.
Terror; as the Beating the Party, if he refuse to quit the Possession, or Breaking open Doors (which makes the Entry forcible) whether any Person be in the House at the Time or not, especially if it be a Dwelling House) or, as some say, any Act of Outrage after the Entry, as the Carrying away the Party's Goods, &c. but it seems S. 26
that the bare Lifting up a Latch, or Putting back a Bolt of a Door, do not bring a Man within these Statutes, which speak of Entries with strong Hand or Multitude of People: And it hath been holden, that if a Man find another out of his House, and forcibly withhold him from Returning, and in the mean Time send Persons to take peaceable Possession, he is not guilty within these Statutes, because no Violence was done to the House, but only to the Person, but *Quare.*

Sect.

Of forcible Entries and Detainers.

Sect. 14. Wherever a Man behaves himself in such a Manner at the Time of his Entry, as plainly intimates a Design to back his Pretensions by Force, as by carrying with him an unusual Number of Servants or Weapons, &c. or by threatening bodily Hurt to those, that shall withstand him, or by making Use of any other Circumstances of Terrour, which give the Persons in Possession of the Tenements, which he claims, just Cause to fear personal Hurt, unless they give Way to him, his Entry is forcible; but bare Threats to destroy another's Goods or Cattle will not make an Entry forcible.

S. 27.

S. 29.

S. 28.

What Detainer shall be adjudged forcible.

Sect. 15. The same Circumstances, which will make an Entry forcible, will make a Detainer forcible; and therefore if one keep in his House unusual Weapons, or an unusual Number of People, or threaten to do bodily Hurt to the former Possessor, if he return; or as some say, if a Man place Persons at a Distance from the House to assault those, who shall attempt to make an Entry into it; or if a Man shall shut his Doors against a Justice of Peace coming to view the Force, and obstinately refuse to let him come in, he shall be adjudged guilty of a forcible Detainer, but not for a bare Refusal to go out of the House, and continuing therein in Despite of another.

S. 30.

A: to what Possessions one may be guilty of a forcible Entry or Detainer.

Sect. 16. A forcible Entry into, or Detainer of an Ecclesiastical Possession is as much within the Statute, as those done to a Temporal one: And it is said that one may be indicted for a forcible Entry into any Hereditament, for which a Writ of Entry may

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Of forcible Entries and Detainers.

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may lie, either by the Common Law, as Rent, or by Statute, as Tithes, &c. but *Quære* if an Indictment of forcible Entry will lie for a Common, or Office, as it seems that it will for a forcible Detainer; as where one menaces a Commoner with bodily Hurt, if he dare put in his Beasts, &c. But it seems clear that no Violence done to a Man in respect of a bare Easement as a Way, &c. can come within these Statutes. Also it seems that a Man cannot be convicted on View, on 15 Ric. 2. of a forcible Detainer of any Tenement, wherein he cannot be said to have made a forcible Entry, because that Statute extends only to such forcible Detainer, as follows a forcible Entry.

S. 31.

Sect. 17. No one can come within these Statutes by a Force done to a Tenement, whereof he himself had the sole and lawful Possession, at and before his Entry, as by breaking open the Doors of a House or Castle, which is his own Inheritance, &c. but forcibly detained from him by one, who claims the bare Custody of it, or as some say, by one, who is possess'd of it as his Tenant at Will. But a joint Tenant or Tenant in common, forcibly ejecting or holding out his Companion, seems to come within the Meaning of these Statutes, and therefore an Indictment of forcible Entry into a Moiety of a Manor, &c. is good. Also if one, who hath a Right of Entry, make a Claim, and the wrongful Possessor continue his Possession with Force and Arms, he is punishable for a forcible Entry and Detainer within these Statutes; for

*Who may
be guilty of
a forcible
Entry or
Detainer.*

S. 32.

S. 33.

S. 34.

for the Estate, which he had before the Claim was wholly defeated by it, and his Continuance in Possession afterwards amounted to a new Entry.

S. 35.

Seç. 18. Infants and Feme-Coverts may be guilty within these Statutes, in respect of an actual Violence done by them in Person, but not in respect of what shall be done at their Command, because all such Commands of theirs are void. And it is said that a Feme-Covert may be imprisoned, but not an Infant, for he shall not suffer corporal Punishment by Force of the general Words of a Statute, which doth not name him.

*The Form
of a Record
grounded
on those
Statutes.*

The Caption

S. 36.

Seç. 19. The Caption of an Indictment on these Statutes needs not shew that the Justices, who took it, had Authority to hear and determine Felonies, &c. for the Statutes enable all Justices of Peace, as such, to take such Indictments.

*Certainty
in descri-
bing the Te-
nement en-
tered upon,
&c.*

S. 37.

Seç. 20. The Tenement, in which the Force was committed, must be described with convenient Certainty; and therefore if it be described only by the Name of a Tenement, or of a House or Tenement, or of two Closes of Meadow or Pasture, or of a Rood or half a Rood of Land, or of certain Lands belonging to such a House, or of a Tenement with the Appurtenances called *Trupenny* in *D.* or if it do not shew the Town, in which the Possession lies, the Indictment is not good; but it is sufficient to describe a House by the Words *Domum sive Messuagium*, for they are equivalent, or to describe a Close, as call'd *B's Close*, &c. without shewing the Number of Acres, and
if

if an Indictment be uncertain as to part, and certain as to other Part, it may be quashed so far as it is uncertain, and stand good for the Residue.

Sect. 21. An Indictment on 5 or 15 Ric. 2. needs not shew who had the Freehold of the Tenements, at the Time of the Force; but it seems that it ought to shew that some Person had some Estate therein, for otherwise it doth not appear that the Entry was injurious to any one; but it is said that an Indictment on 8 H. 6. must shew that the Place was the Freehold of the Party grieved, at the Time of the Force; and therefore that it is not sufficient to say that the Defendant entred into such a House *existens liberum Tenementum J. S. &c.* without saying *ad tunc existens liberum Tenementum J. S.* for otherwise it may be intended that it was his Freehold, at the Time of the Indictment only. Also it is said that an Indictment cannot warrant a Restitution, unless it find that the Party was seized at the Time: But it is said that such Seizin is sufficiently shewn by a necessary Implication; as where it is laid that the Defendant disseized J. S. which could not be, unless J. S. had been seized: And it hath been holden that the Words *possessionatus pro termino vite*, though not strictly proper, in such Indictment are sufficient: Also it is said that if it appear that the Party injured had the Freehold at the Time of the Force, there is no need to shew what Estate in Particular he had, or what Title. And it hath been adjudged that an Indictment on this

Certainty in shewing the Estate of the Party.

S. 38.

this Statute for Entering on and forcibly Expelling my Farmer, and Disseising me, is good, without shewing what Estate he had, for the forcible Disseisin to me being the main Point of the Indictment, it is sufficient to set it forth in Substance; yet in this very Case the Want of shewing that the Farmer was ousted would have been an incurable Fault, because his Possession being my Possession, unless he were ousted I could not be disseised. Also an Indictment on 21 Jac. 1. 15. must shew that the Party injured was possessed of such an Estate, as will bring him within that Statute, and therefore it is not sufficient for it to shew in general that he was possessed, or that he was possessed of a certain Term without adding for Years; for in the first Case it may be intended that he was a Tenant at Will, and in the second that he was possessed for Term of Life, in neither of which Cases he is within that Statute, but it is said to be sufficient to set forth a Possession within the Statute in the reciting Part of an Indictment, as thus, *quod cum J. S. was possessed for a certain Term of Years, &c.*

Repugnancy.
57.

Sect. 22. A Repugnancy in setting forth the Offence in an Indictment on these Statutes, is an incurable Fault; as where it is alledg'd that the Defendants *pacifice intraverunt, & J. S. adtunc & ibidem vi & armis disseisiverunt*; or that the Party was possessed of a Term for Years, or of a Copyhold Estate, and that the Defendants disseised him; or that the Defendants disseised J. S. of Land then and yet being his Freehold;

for it implies that he always continued in Possession; and if so, it is impossible he could be disseised at all. But some say that this may be reconciled by intending that he re entred after the Disseisin and before the Indictment; but it seems clear, that if the Words *adhuc extra tenet* be added, such a Repugnancy cannot be help'd by any Intendment, and that no Restitution can be awarded on such Indictment, whether these Words be added or not, because the Party grieved appears by the Indictment to have had the Freehold at the Time, when it was found.

Sect. 23. A Conviction on 15. R. 2. of a forcible Detainer on View cannot be good, unless it shew that the Defendant was also guilty of a forcible Entry, for it seems plain from the express Words of that Statute, that the Justices have no Jurisdiction by it over a forcible Detainer, where there has not been a forcible Entry; but it seems that such forcible Entry is sufficiently set forth in the Complaint recited in the Conviction. And it seems a reasonable Opinion that an Indictment on 8 H. 6. setting forth an Entry and forcible Detainer, is good without shewing whether the Entry were forcible, or peaceable; for the Words of the Statute are, *Where any doth make forcible entry in Lands, &c. or them hold forcibly*; but it must set forth an Entry, for otherwise it appears not but that the Party hath been always in Possession, in which Case he may lawfully detain it by Force. It seems that if a Bill be preferr'd to a Grand Jury both for a forcible Entry and Detainer, and found

S. 39.

Entry peaceable and Detainer forcible.

S. 40.

S. 40.

B. 2. Ch. found *Ignoramus*, as to the forcible Entry,
25. S. 2. and *Billa vera*, as to the forcible Detainer,
it may be quashed, for a Grand Jury cannot find a Bill true for Part, and void for Part.

Restitutio
S. 41. *Sett.* 24. No Indictment can warrant a Restitution, unless it find that the Wrongdoer both ousted the Party grieved, and also continueth in Possession to the Time of the Indictment; for it is repugnant to award Restitution of Possession to one, who never had any, and it is vain to award it to one, who doth not appear to have lost it.

Adtunc & ibidem not necessary.
S. 42. *Sett.* 25. The Time and Place of the Disseisin are sufficiently set forth in an Indictment, alledging that the Defendant *tali die intravit*, &c. & *ipsum A. B. manu forti disseisvit*, without adding the Words *adtunc & ibidem*, for the Entry and Disseisin being both of the same Nature, and the one plainly tending to the other, it is a natural Intendment that they both hapned together; but in an Indictment of Murder it is a fatal Mistake not expressly to shew the Day and Place of the Stroke as well as of the Assault.

Illicite, expulit, inde, manu forti or Complaint not necessary.
S. 43. *Sett.* 26. A Disseisin is sufficiently alledg'd by shewing that the Defendant entered, &c. into such Land and disseised the Party, without the Words *illicite*, or *expulit*, or *inde*, for *disseisvit* implies as much. Also the Offence is sufficiently described by the Words *manu forti*, &c. without *vi & armis*. Also it is said that such Indictment may be good without mentioning any Complaint, for that the Words in the Statute, that

that seem to require it, are put in *ex abundanti*, and therefore it is said that if a Justice of Peace have by any Means whatsoever Notice of a forcible Entry or Detainer, he ought to proceed against it, as a Disturbance of the Peace, the Preservation whereof was the chief End of these Statutes.

S. 44.

Sect. 27. Restitution ought only to be awarded for the Possession of Tenements visible and corporeal, for a Man, who hath Right to such, as are invisible and incorporeal, as Rents, Commons, &c. cannot be put out of Possession of them, but only at his own Election, by a Fiction of Law to enable him to recover Damages against the Person, that disturbs him in the Enjoyment of them, and all the Remedy, that can be desired against a Force, in respect to such Possessions, is to have the Force removed, and those, who are guilty of it punished, which may be done by 15 Ric. 2.

Of what Possessions Restitution shall be awarded.
S. 45.

Sect. 28. Restitution shall only be awarded to him, who is found by the Indictment to have been put out of an actual Possession, but not to one, who was only seiz'd in Law, and therefore not to an Heir, on whom a Stranger forcibly abateth on the Death of the Ancestor; and *a fortiori* not to an Heir on a forcible Entry on his Ancestor.

To whom Restitution shall be made.
S. 46.

Sect. 29. It hath been holden that if a Disseisor re-enter peaceably on the Disseisor, and continue for some Time in peaceable Possession, and afterwards detain it by Force, the Disseisor shall not be restored on an Indictment, finding the said Force,

S. 47.

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because

because his Possession was peaceably defeated, and at the Time of the Force, he had in Judgment of Law no Possession at all; but *Quere*. For if this Practice should be allow'd, it would be easy for a Person to evade the Intent of the Statutes, by making a peaceful Entry, and afterwards detaining his Possession by Force, which seems plainly against the Intent of 8 H. 6. unless the Party have been in Possession three Years.

Vid. infra
Sect. 33.

By whom,
and in
what Man-
ner Restitu-
tion may be
awarded.
S. 49. 50.

Sect. 30. It is certain that the same Justice of Peace, before whom an Indictment of forcible Entry or Detainer is found (but no other Justice of Peace, either in or out of Sessions) may award a Restitution to the Party; also it is said that such Justice may execute such Award either in Person, or by Precept to the Sheriff. But no other Court can personally restore a Party without a Precept to the Sheriff; neither can a Justice of Peace, or any other Court grant a Restitution on a Conviction on View, but only on an Indictment according to 8 H. 6. or 21 Jac.

S. 51.

Sect. 31. Justices of Oyer and Terminer can neither enquire of a forcible Entry or Detainer, nor award Restitution on any such Indictment; for when a new Power is created by Statute, and certain Justices assign'd to execute it, it cannot regularly be executed by any other, and Justices of Oyer and Terminer have a Commission entirely distinct from that of Justices of Peace; but the King's Bench in respect of its Sovereign Jurisdiction over all Criminal Mat-
ters,

ters, may award Restitution on such an Indictment remov'd before them.

Sect. 32. The Sheriff, if need be, may raise the *Posse* to assist him in the Execution of a Precept of Restitution, and therefore if he return, that he could not make Restitution by Reason of Resistance, he shall be amerced. S. 52.

Sect. 33. The three Years Possession, which will bar a Restitution on an Indictment of forcible Entry or Detainer, must have continued without Interruption; and therefore one, who hath been wholly ousted of his Possession, cannot justify a forcible Detainer, within three Years after such Ouster, tho' he were restored to his Possession by Force of these Statutes, and for the same Reason a Disseisor cannot justify a forcible Detainer within three Years after a Claim made by the Disseeisee. *How Restitution may be barr'd by three Years Possession.*
S. 53.

Sect. 34. Also it is said that the three Years Possession must be of a lawful Estate, and therefore that a Disseisor can in no Case justify a forcible Entry or Detainer against the Disseeisee having a Right of Entry, as it seems that he may against a Stranger, or even against the Disseeisee, having by his Laches lost his Right of Entry. S. 54.

Sect. 35. Also it is holden that three Years Possession after a forcible Entry will in no Case justify a forcible Detainer, but *Quare.* S. 54.

Sect. 36. It seems clear, that wherever such Possession is pleaded in Bar of a Restitution, either in the King's Bench, or before Justices of Peace, no Restitution ought S. 55.

to be awarded, till the Truth of the Plea be tried: And it is said that such Plea needs not shew under what Title, or of what Estate such Possession was, because not the Title, but the Possession only is material.

S. 56.

Sect. 37. If one, who has been three Years in Possession be afterwards ousted, and the same Day re-enter with Force, and be also indicted on the same Day, yet it seems that by the plain Meaning and Reason of the Statute, he can no more bar the Restitution of the Party forcibly enter'd upon, than if he had been indicted on another Day, tho' the Words of the Statute are, *that there shall be no Restitution, &c. if the Person indicted have been in quiet Possession for three Years next before the Day of the Indictment found,* for the Import hereof seems to be no more, than if it had been said *for three Years next before the Indictment.*

Other Causes of the Stay of Restitution.

S. 59.

S. 57.

Sect. 38. It is said to be contrary to natural Justice to make an Award of Restitution in a Defendant's Absence, without first calling him to answer for himself. Also it is clear that, if the Defendant tender a Traverse of the Force, which must be in Writing, no Restitution ought to be till such Traverse be tried, in Order to which the Justice, before whom the Indictment is found, ought to award a *Venire* for a Jury, &c. But if such Jury find so much of the Indictment to be true, as will warrant a Restitution, it will be sufficient, tho' they find the other Part of it to be false; as where on an Indictment of forcible Entry and forcible Detainer they find the Entry peaceful, and the Detainer only forcible.

Sect.

Sect. 39. The same Justices, who have ^{Restitution} awarded a Restitution on an Indictment of ^{how super-} forcible Entry, &c. or any two, or one of ^{seded.} them, may afterwards supersede such Re- S. 60.
stitution, upon an Insufficiency in the In-
dictment appearing unto them: But no o-
ther Justices, or Court whatsoever, have
such Power, except the Court of King's
Bench; but a *Certiorari* from thence wholly S. 61.
closes the Hands of the Justices of Peace,
and avoids any Restitution, which is exe-
cuted after its *Teste*, but does not bring
the Justices into a Contempt without No-
tice, &c.

Sect. 40. Also the Court of King's Bench
has such a discretionary Power over these S. 62. 65.
Matters, from an equitable Construction of
the Statutes, that if a Restitution shall ap-
pear to have been illegal'y awarded or
executed, the said Court may set it aside,
and grant a Re-restitution to the Defen-
dant: As where the Indictment, on which
the Justices proceeded, is quashed for In-
sufficiency; or where it appears that the
Justices of Peace were irregular in their
Proceedings; as by Refusing to try a Tra-
verse of the Force, &c. or where the De-
fendant traverses the Force, and gets a Ver-
dict in the King's Bench: But the Defen-
dant cannot get such Verdict, if the Force S. 63.
be pardoned by a general Statute-Pardon
before the Trial, because the Offence ap-
pearing to the Court to be discharged, it
can no longer be proceeded upon, though
the Defendant would wave the Benefit of
the Pardon.

Sect. 41. Neither can a Defendant in any Case whatsoever *ex rigore Juris* demand a Re-restitution, because the Power of Awarding it is not expressly given by any Statute, and therefore it will be in vain for a Man to expect it, where upon the whole Case it shall not appear that he has some Right to the Tenements, the Possession whereof he lost by the Restitution to the other Parry.

Sect. 42. A Re-restitution has been granted to a Defendant, upon a Verdict for him in the King's Bench on a Traverse of the Indictment, notwithstanding it hath been shewn to the Court, that, since the Restitution on the Indictment, a Stranger has recovered the Possession of the same Land in the Lords Court.

CHAP,

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C H A P. LXV.

Of Riots, Routs, and unlawful Assemblies.

Sett. 1. **A** Riot is a tumultuous Disturbance of the Peace, by three or more assembling together of their own Authority, with an Intent to assist one another in the Execution of an Enterprize of a private Nature, and afterwards violently executing the same, to the Terrour of the People, whether the Act intended were lawful or unlawful. *What a Riot.*

Sett. 2. And First, The Use of Force by three or more, in the Execution of any Design, wherein the Law doth not allow it, seems to make all that are concerned therein Rioters. But a Sheriff, or a Constable, or as some say, even a private Person, may lawfully assemble a competent Number of People to suppress Enemies, or Rebels, or dangerous Rioters: And a Justice of Peace having just Cause to fear a Resistance may raise the *Posse*, in Order to remove a forcible Entry or Detainer. And it seems the Duty of every Officer, who has the Execution of the King's Writs, and is resisted in endeavouring to execute them, to raise such a Power, as may enable him to overcome such Resistance; but it doth not seem safe to raise a Force for the Execution. *S. 2. The Force must be without Authority.*

ecution of Civil Process, without a previous Resistance; neither is any needless Outrage in any Case lawful.

S. 3.
*The first
Meeting
sometimes
innocent.*

Sett. 3. If a Number of Persons being met together on an innocent Occasion happen on a sudden Quarrel to fall together by the Ears, they are not guilty of a Riot, but only of an Affray; but if Persons at first innocently assembled happen to quarrel, and then form themselves into Parties with Promises of mutual Assistance, and make an Affray; or if Persons so assembled confederate together on a sudden Proposal of going in a Body, to pull down a House, or to do any other Act of Violence, and execute the same accordingly, they are guilty of a Riot, because after such Confederacy, they may as properly be said to have assembled for such Purpose, as if they had had it in View at their first Meeting together. Also if a Person seeing others engaged in a Riot join himself to them, and assist them, he is as much a Rioter, as if he had been with them from the Beginning, for he has no Pretence, that he came innocently into the Company. And it would be endless to examine, whether every particular Person in a Riot were of the first Assembly, or knew of the Design.

S. 4.
*here must
be some Violence.*

Sett. 4. It is said that every Riot must be accompanied with some actual Violence, either done, or at least offered to the Person, or Possessions of a Man, and therefore that Persons assembled together in such a Manner, as only causes a Terror to the People, without any Offer of Violence

to the Person or Possessions of any Man, are not guilty of a Riot, but only of an unlawful Assembly.

Seç. 5. However it seems agreed, that there can be no Riot without some Circumstances of Terrour, for the Offence must be laid, *in terrorem populi*, from whence it clearly follows, that Assemblies at Wakes for common Sports are not Riots; and from the same Ground it may be argued, that Persons may assemble together to do a Thing prohibited by Common Law, or Statute, as to carry off a Piece of Timber, to which one of them pretends a Title, or to celebrate Mafs, and may execute such their Intent, without being Rioters, if they take Care to do it in a peaceful Manner, without any Threats, or Shew of Force, &c.

S. 5.

And Terrour.

Seç. 6. The Grievance intended to be redressed, must be of a private Nature, as relating to the Inclosure of Lands, in which the Inhabitants of such a Town claim common, &c. but if it be of a publick Nature, as relating to all Inclosures in general, or the Reformation of Religion, &c. the Offence will be high Treason.

S. 6.

The Grievance ought to be private.

Supra Ch. 17. S. 14.

Seç. 7. It seems that Persons assembling together, and assisting one another in a violent and tumultuous Manner, in Order to remove a Nuisance, or to make an Entry into Lands, to which they have a Right of Entry, are as properly Rioters, as if the Thing intended had been unlawful; for it is highly dangerous to the publick Peace for private Persons, in such a Manner to redress their own Grievances.

Contra Salk. 594. Pl. 4. Intest law-ful.

Seç.

*What a
Rout.*

S. 8.

Sect. 8. A Rout is by most taken for any Disturbance of the Peace by Persons assembled with an Intent to do any Thing whatsoever, which, if done, would make them Rioters, and actually moving towards the Doing it: But by others it is confined to such Assemblies, as are occasioned by a Grievance common to all the Company.

*S. 9.
What an
unlawful
Assembly.*

Sect. 9. An unlawful Assembly is commonly taken for a Disturbance of the Peace by Persons barely assembling with an Intent to do a Thing, which, if done, would make them Rioters, but neither actually doing it, nor making a Motion towards the Doing it. But it seems that any Meeting of great Numbers with such Circumstances of Terrour, as cannot but endanger the Peace, and raise Fears and Jealousies, is properly an unlawful Assembly; as where great Numbers, complaining of a Grievance, meet together in Arms, in Order to consult of the most proper Means for the Recovery of their Interests, for no one can foresee what may be the Event of such an Assembly.

*Defence of
a House.*

Sect. 10. A Man may lawfully assemble his Friends for the Defence of his House against those, who threaten unlawfully to enter it, or to beat him in it, but not for the Defence of his Person against those, who threaten to beat him in his Way to such a

*Riots, &c.
how sup-
pressed and
punished by
Common
Law.*

Market, &c.

Sect. 11. Every Sheriff and Under-Sheriff, and every other Peace-Officer, may and ought to do all that in them lies towards the Suppressing of a Riot, and may command all other Persons whatsoever to as-

sist

sist them. Also private Persons may both stay those, whom they shall see engaged in a Riot, and stop others, whom they shall see coming to join them; and if the Riot be of a dangerous Tendency, as favouring of Rebellion, &c. it seems that private Persons may make Use of Arms in the Suppressing of it; but it seems not advisable to venture on such Extremities in common Cases. However by 1 Geo. 5. *If twelve or more shall be riotously assembled, and not disperse within an Hour after Proclamation, every Peace Officer of the Place, and all Persons commanded to the Assistance of such Officer, may and ought to apprehend such Rioters, and carry them before a Justice of Peace; and if any such Rioter shall happen to be killed, maimed, or hurt, by Reason of his Resisting such Officer, &c. the Officer, &c. shall be discharged.* But this Statute being wholly in the Affirmative takes not away any Part of the Authority in the Suppressing of a Riot, which either Officers or private Persons have by the Common Law.

Vinfra
S. 19.

Señ. 12. Riots are regularly punishable at Law by Fine and Imprisonment only; but sometimes they have been punish'd with Pillory upon extraordinary Circumstances, and sometimes with Forfeiture of Lands, when undertaken in Contempt of the King's Prohibition, under Pain of such Forfeiture. And sometimes Riots within the Limits of a Corporation have been punished by a Seisure of its Liberties, &c. for its Magistrates Neglect in not endeavouring to suppress it.

S. 12.

S. 13.

Señ.

Of Riots and unlawful Assemblies.

Sett. 13. Infants under the Age of Discretion are not punishable as Rioters, but Women are.

*S. 14.
How suppressed, &c.
by Statute
by one Justice of
Peace.*

Sett. 14. By 34 *Ed.* 3. 1. *Justices of Peace have Power to restrain Offenders, Rioters, and all other Barretors, and to pursue, arrest, take, and chastise them according to their Trespass and Offence, and to cause them to be imprisoned, and duly punished, &c.*

S. 16.

Sett. 15. It hath been resolved, that any one Justice of Peace, finding Persons riotously assemb'ed, may by Vertue of this Statute, not only arrest the Offenders himself, and bind them to their good Behaviour, or imprison them, if they do not offer good Bail, but may also, by a bare Parol Command authorize others to arrest them, by Vertue whereof the Persons so commanded may pursue and arrest the Offenders in his Absence, as well as Presence. Also it is said, that if he be sick, and hear of a Riot, he may send his Servants to arrest the Offenders, and to bring them before him; or, if he go himself, where he hears that they are, and find them not, he may leave his Servants there, with a Command to arrest them, when they shall come. And it is said, that, after a Riot is over, he may by his Warrant arrest any of the Offenders, and afterwards commit them, till they find Sureties for their Behaviour. But it is not agreed, that he can raise the *Posse* by Vertue of this Statute, to suppress a Riot, as he may by 17 *Rich.* 2. 8. which enacts, *that as soon as Sheriffs and other the King's Ministers shall hear of a Riot, Rout, or other Assembly against the Peace, they with the Power of the County*

S. 18.

County shall disturb such Malice, and apprehend the Offenders, and put them in Prison, till due Execution of the Law be made of them, and that the Lords of other liege People shall attend with their whole Strength the Sheriffs and Ministers aforesaid.

SECT. 16. Neither of these Statutes seem to empower a Justice of Peace, either to record a Riot upon his View, or to take an Inquisition of it after it is over, for they give him no judicial Power, and therefore if under Pretence of these Statutes he shall arrest an innocent Person, he is liable to an Action, and the Person arrested may rescue himself. But if he make a Record upon the Statute of *Northampton* of a Seizure of Arms, and Imprisonment of the Party, &c. for an Offence contrary to the Statute; or if he record a Riot on View, in proceeding against a forcible Entry, &c. by Virtue of 15 *Rich. 2.* or if two Justices record a Riot, on their View, by Virtue of 13 *H. 4. 7.* set forth more at large in the next Section, the Record admits of no Traverse, because it is made by Persons acting in a judicial Capacity.

Vid. supr.
Ch. 63.

Supra Ch.
65. S. 5.

Vid. infra
S. 22. 23.

SECT. 17. By 13 *H. 4. 7.* *If any Riot, or Rout, or Assembly of People be made against the Law, the Justices of Peace, three or two of them, and the Sheriff or Under-Sheriff shall come with the Power of the County, if Need be, to arrest them, and shall arrest them; and the same Justices and Sheriff, or Under-Sheriff shall have Power to record that, which they shall find so done in their Presence against the Law. And by the same Record the Offenders shall be convicted in the Manner and Form, as is contained in the Statute of forcible Entries.*

How suppressed by two or more Justices, or the Sheriffs.

SECT.

S. 20.
 See 17 R.
 2 Ch. 8.
 2 H. 5. Ch.
 8.

Seç. 18. It is said, that even Noblemen, and all other Persons whatsoever, except Women, Clergymen, Persons decrepit, and Infants under the Age of fifteen Years are bound on reasonable Warning to attend the Justices and Sheriffs in the Execution of this Statute, and not only to arrest the Rioters, but also to conduct them to Prison.

S. 21.
 Vid. supra
 S. 11.

Seç. 19. And it is said that it is lawful for those, who attend the Justices in Pursuance of this Statute, to make Use of Arms in suppressing the Riot, and to beat, wound, and even kill those, who shall resist, or refuse to surrender themselves.

S. 22.

Seç. 20. It is holden that Justices of Peace are not only empowered by the Statute to raise the *Posse*, to suppress a Riot that happens in their own View, or Hearing, but that they may justify Doing it on a credible Information of a notorious Riot at a Distance, whether in Truth there were a Riot or not; but they ought to be cautious in alarming the Country in this Manner, without reasonable Ground to fear that it may be dangerous to stay till they can have certain Information of the Fact.

S. 23:

Seç. 21. It seems clear, that if the Justices, &c. in going towards a Place, where they hear that there is a Riot, shall meet Persons coming from thence riotously arraied, they may arrest them for being so assembled, and make a Record thereof, for the Statute extends to all unlawful Assemblies, as well as to Riots.

Seç.

Sect. 22. Also it seems clear, that after the Justices have had the View of a Riot, they may record it, whether the Offenders be at the Time in Custody, or have escaped. And it is said that they may on a fresh Pursuit arrest such, as have escaped, but that neither they, nor any other Court, except the King's Bench, can at another Time award Process on such Record. But it seems clear, that any Justice of Peace, at any Time after a notorious Riot, whether recorded or not, may by Vertue of the above-mentioned Statute of 34 E. 3. arrest the Offenders, in order to compell them to find Sureties for their Behaviour.

S. 24.

Supra
Sect. 14.
Vid. infra
S. 26.

Sect. 23. A Record of a Riot, as happening in View, in Pursuance of this Statute, admits of no Traverse: And if it be produced against a Man on a *Scire facias* against him, on a Recognizance for the Peace, it is said not only to conclude him from pleading the general Issue, but also from pleading any Justification. Yet if it charge a Man not only with a Riot, &c. but also with Felony, Maim, or Rescous, it no way concludes him, as to these Offences, because they are not within the Statute.

S. 25.

S. 26.

Sect. 24. Such Record being so high a Conviction ought to have the greatest Certainty, both as to the Time and Place of the Offence, and the Number of the Offenders, and the Kinds of Weapons made Use of by them, and all other Circumstances; and ought also to shew that it was made by the Sheriff, or Under-Sheriff, as well as by the Justices.

S. 27.

Vid. infra
S. 29.

Sect.

- S. 28.** *Sect. 25.* It is said, that the Offenders being arrested by the Justices, and the Offence recorded, they ought immediately to be committed by the same Justices, till they shall make Fine and Ransom, which must be assessed by the same Justices, And by 2 H. 5. 8. ought to be larger, than it was wont to be, for the Support of the Charges of the Justices, &c. And by the same Statute the Imprisonment for a great Riot ought to be for a Year at the least. And formerly the Star-Chamber would set an additional Fine, if the Fine set by the Justices were thought too small.
- S. 35.**

- Sect. 26.* It is farther enacted by the said Statute of 13 H. 4. 7. *That if the Offenders be departed before the Coming of the Justices, &c. the same Justices, three or two of them (viz. the same, who were by the former Part of the Statute, impower'd to raise the Posse, whether they dwell near or far off, and whether they went to view the Riot, or not) shall diligently inquire within a Month (viz. a Lunar one, as some say) after such Riot, &c. so made, and thereof shall hear and determine according to the Law of the Land.* By Vertue thereof they may award Proceſs under their own Teſte againſt the Persons indicted, and do all other Things in Relation thereunto, as are incident to all Courts of Record. But *Quære*, if they can safely dismiss the Offenders on their paying their Fine, without Imprisonment.
- S. 32.**
- S. 31.**
- S. 35.**
See the precedent Section.

Sect. 27. By 19 H. 7. 13. *The Sheriff on a Precept directed to him to return a Jury in Pursuance of 13 H. 4. 7. shall return twenty four Persons, whereof every one shall have Tenements*

Of Riots and unlawful Assemblies.

123

to the yearly Value of 20 s. of Freehold, or 26 s. and 8 d. of Copyhold, or of both, over and above all Charges, to inquire of the said Riot, &c. and shall return in Issues at the first Day 20 s. and at the second 40 s. &c. and for every Default shall forfeit 20 l. &c.

Sect. 28. If the Justices give a Charge to the Jury; or, as some say, do but award Process for Returning a Jury within the Month, they may take the Verdict afterwards, for the Cause being once attached in them within the Time prescribed by the Statute, the Prosecution of it seems to be left to their Discretion. S. 31.

Sect. 29. It seems from the different Wording of the several Clauses above-mentioned, that the Sheriff ought not to join with the Justices, in taking such Inquiry, as he ought to do, in Recording a Riot on View. S. 31.

Sect. 30. By the said Statute of 13 H. 4. 7. If the Truth cannot be found in the Manner aforesaid, then within a Month next following (viz. as it is generally holden, within a Lunar Month after the Inquiry, if any were taken, or if no Inquiry were taken within a Month after the Obstructions, which hindered the Taking it) the Justices, three or two of them (viz. as it is generally holden, those, who had the View of the Riot, or those, who took the Inquiry, or those, who endeavoured to take it, but were obstructed) and the Sheriff, or Under-Sheriff shall certify before the King and his Council (viz. the Privy Council Board) all the Deed, and the Circumstances thereof; which Certificate shall be of like Force as the Presentment of twelve Men, S. 40. S. 39. S. 41. S. 43.

Of Riots and unlawful Assemblies.

Men, and thereon the Offenders shall be put to Answer, and if found guilty, shall be punished according to the Discretion of the King and his Council. And if such Offenders do traverse the Matter so certified, the same Certificate and Traverse shall be sent into the King's Bench to be tried and determined, &c. and if they appear not on such Process and Proclamation, as are given by the Statute, they shall be attainted of the Riot.

Sect. 31. And by 19 H. 7. 13. If a Riot, &c. be not found by the Jury, by Reason of any Maintenance of the Jurors, the same Justices, over and above such Certificate, which they are bound to make by the said Statute of 13 H. 4. 7. shall in the same Certificate certify the Names and Misdemeanors of such Maintainers, &c. on Pain of twenty Pounds, if they have no Excuse for not certifying the same; which Certificate shall have the like Force, as if the Matter were found by Verdict, and every Person duly proved to be such a Maintainer shall forfeit twenty Pounds.

Sect. 32. It is said, that if there be a Variance between the Inquisition and Certificate, as if the one be of a bare Riot by ten Persons, and the other of a Riot by twenty, or by ten in Harness; or of a Riot joined with a Battery, that shall be preferred, which has the more aggravating Circumstances, because the Fine to the King will be the greater.

Sect. 33. Also by 13 H. 4. 7. the Justices of Peace dwelling nearest where such Riot, Assembly, or Rout shall be (viz. such as are notorious, and in Nature of Insurrections) together with the Sheriff or Under-Sheriff, and also the

the Justices of Assizes, for the Time that they shall be there in their Session, in Case that any such Riot shall be in their Presence, shall do Execution of this Statute, on Pain of one hundred Pounds; viz. If no other Justices of Peace do actually execute the Statute, and the Justices dwelling nighest the Place dwelt at the same Time also in the County, and either had express Notice of the Riot, or must be intended to have had Notice from the Notoriety of it.

S. 45.
S. 46.
S. 52.

Seet. 34. It is said that, if the Justices, whose Dwelling was nighest at the Time of the Riot, happen to die within the Month, those, whose Dwelling is thereby become the nearest, are bound to execute the Statute, as the others were. Also it is said, that if any other Justices on Notice of the Neglect of those, that dwell nighest, to execute the Statute, do not supply their Defect, they are finable at Discretion.

S. 47.

S. 48.

Seet. 35. It is said, that if the two Justices do their Duty in executing, or endeavouring to execute the Statute, they incur no Penalty thro' the Sheriff's Default in not returning a Jury, &c.

S. 49.

Seet. 36. The Acquiescence or Agreement of the Parties agrieved is no Excuse to the Justices, in not executing the Statute.

S. 53.

Seet. 37. By 2 H. 5. 8. Upon a Default of the said Justices, touching the Execution of 13 H. 4. a Commission shall be awarded at the Instance of the Party agrieved, to enquire as well of the Truth of the Case, as of such Default, &c.

S. 54.

Seet. 38. By 2 H. 5. 9. and 8 H. 6. 14. The Lord Chancellor on a Complaint to him that a dangerous Rioter is fled, &c. and a Sugestion

Of Riots and unlawful Assemblies.

under the Seals of two Justices of Peace, and the Sheriff, that the common Fame and Voice runneth in the County of a Riot, may award a Capias against the Party, and a Writ of Proclamation, &c.

S. 56. Sect. 39. By 1 G. 5. If twelve, or more, being unlawfully, riotously, and tumultuously assembled, and being required or commanded by any Justice of Peace, Sheriff of the County, or Under-Sheriff, Mayor, or other Head Officer, or Justice of Peace of any City or Town corporate, where such Assembly shall be, by Proclamation in the King's Name, to disperse, &c. shall afterwards unlawfully, riotously and tumultuously continue together one Hour, after such Proclamation, or after a willful Let or Hindrance of a Justice of Peace, &c. from making the Proclamation, they shall be adjudged Felons without Clergy; and so shall all those, who shall in any Manner wilfully and knowingly let, hinder or hurt any Person, &c. who shall begin or go to proclaim, according to the Direction of the Statute. Also those are in like Manner guilty, who being unlawfully, riotously and tumultuously assembled, to the Disturbance of the publick Peace shall unlawfully and with Force demolish or pull down, or begin to demolish or pull down any Church or Chapel, or any Building for religious Worship, certified and registred according to the Toleration-Act, or any Dwelling-house, Barn, Stable, or other Out-house. And whenever any such Church, &c. shall be demolished, &c. by any such Rioters, &c. the Town or Hundred shall make good the Damage.

CHAP. LXVI.

Of Offences by Officers in general.

Offences not Capital, more immediately against the Subject, not amounting to an actual Disturbance of the Peace, are either,

1. By Officers, or
2. By common Persons.

Those by Officers are either,

1. Neglect, or Breach of Duty, or
2. Bribery, or
3. Extortion.

As to the first of these, it hath been holden, that the bare Non-user of an Office concerning the Administration of Justice, or the Common Wealth, shall be a Forfeiture of it, whether any special Damage be occasioned by it, or not; but this Point doth not seem to be fully settled. But it seems clear, that all willful Breaches of the Duty of an Office are Forfeitures of it, and also punishable by Fine, &c. But the particular Instances, wherein a Man may be said to act contrary to the Duty

S. 1.

S. 2.

of his Office, seem generally so obvious to common Reason, that it will be needless to endeavour to enumerate them.

CHAP. LXVII

CHAP. LXVII
Of Bribery.

S. 1. *Sect. 1.* **B**ribery in a strict Sense signifies a Judges Taking any valuable Thing whatsoever, except Mear and Drink of a small Value, of any Person, except the King, who has any Thing any Way to do before him, for doing his Office, or by Colour of his Office. And this hath always been looked upon as an Offence of the highest Nature, and was anciently esteemed high Treason.

Sect. 2. But in a large Sense it sometimes signifies the Receiving or Offering of any undue Reward, by or to any Person, whose ordinary Profession or Business relates to the Administration of publick Justice, in Order to incline him to do a Thing relating to his Office against the known Rules of Honesty. And this is also an high Offence at Common Law, and in the Reign of King James I. the Earl of M. Lord High Treasurer, on an Impeachment for refusing to hear Petitions, &c. without great Bribes, and for other such like Crimes, was by the Sentence of the Lords deprived of all his Offices, disabled to sit in Parliament, and fined 30000 l. &c.

Sect.

Sect. 3. And sometimes, it signifies the Taking or Giving a Reward for Offices of a publick Nature, which is also highly punishable by the Common Law, as manifestly tending to discourage Merit, and to introduce all Kinds of Corruption. And it is enacted by 12 Rich. 2. 2. That the Chancellor, and Treasurer, and all others, that shall be called to name, or make Justices of Peace, Sheriffs, Escheators, Customs, Comptrollers, or any other Officer, or Minister of the King, shall be firmly sworn, not to name, or make any such Officer, for any Gift, or Brokage, Favour, or Affection; nor that none, that sues by himself, or by others, privily, or openly, to be in any Manner of Office, shall be put in the same Office, or in any other, but that they make all such Officers of the best and most lawfull Men, and sufficient to their Estimation and Knowledge. And it is enacted by 1 H. 4. 5. That no Sheriff shall let his Bailiwick to farm, &c. And by 5 and 6 Ed. 6. 16. That if any Person shall bargain, or sell, or take any Reward, or Promise of any Reward for any Office, or the Deputation of any Office, any way concerning the King's Revenue, or the Keeping of his Castles, or the Administration or Execution of Justice (such Officer excepted, which had been usually granted by the Justices of either Bench or of Assize) every such Person so bargaining, &c. shall not only forfeit his Right in such Office, but also every Person, who shall give any such Reward, &c. shall be adjudged disabled to have such Office.

Sect. 4. This Statute extends not to Offices in Fee, nor to Offices in the Placations; but it extends to the Offices of Chancellor,

1 Lev. 151.

2 Mod. 45.

Salk 411.

S. 4.

cellor, Register, and Commissary in the Ecclesiastical Courts.

S. 5.

Sect. 5. No Pardon, or Dispensation, can restore the Party to a Capacity of holding the Office contracted for.

Salk. 466,

468. 6.

Mod. 236.

3 Co. 82. b.

Cr. Eliz.

529, 530.

1 And. 107.

150.

Sect. 6. A Bond to pay half the Profits of an Office, or a certain Sum of the Profits, for a Deputation, is not within the Statute; but a Bond to pay a certain Sum at all Events is within the Statute, and consequently totally void, tho' it also contain other Conditions, which if they stood by themselves, would be good.

C H A P. LXVIII.

Of Extortion.

S. 1.

Sect. 1. Extortion in a large Sense signifies any Oppression, under Colour of Right, but strictly it signifies the Taking of Money by an Officer, by Colour of his Office, either where nothing is due, or not so much, or where it is not yet due.

S. 2.

Sect. 2. By the old Common Law, and the Statute of *Westminster I. 26.* no Sheriff, or Officer of the King, whose Office any way concerned publick Justice, or the common Good, could take any Reward for doing his Office, but only from the King: And all Prescriptions contrary hereto are void; as where the Clerk of the Market claimed certain Fees as due Time out of Mind,

Mind, for the Examination of Weights and Measures, &c.

Sec. 3. But the Fee of 20 d. called the Bar-Fee, taken Time out of Mind by the Sheriff from every Prisoner, that is acquitted, and the Fee of a Penny claimed by the Coroner from every Visne, when he came before the Justices in Eyre, are not within this Statute, not only because they are due of Course, as Perquisites, whether any Thing be done by such Sheriff or Coroner, or not, but also because they are known and stated Fees allowed by the Courts of Justice, to their own Officers, for their Attendance in Court, and Fees of this Kind are not within the Intent of this Statute.

S. 3.

Sec. 4. Also it has been found necessary for the Expedition of Justice, to allow these and other Officers certain other Fees in certain other Cases; but if they exceed them, they are guilty of Extortion: Neither can they in any Case maintain an Action on a Promise to pay them any Thing more, than their known Fee for doing their Offices.

S. 4.

Sec. 5. Extortion is punishable at Common Law by Fine and Imprisonment, and Removal from the Office, in the doing whereof it was committed. And by the said Statute of *Westm.* 2. c. 26. Sheriffs, Escheators, &c. and other inferior Officers of Justice, have this farther Punishment, that they shall yield twice as much as they unduly take, &c.

S. 5.

Mind, for the Examination of Witnesses and
 Testimony, &c.

See. 2. But the Fee of a called the
 Juror, is a fine, and is paid by the

CHAP. LXIX.

Of Perjury.

Offences not Capital, more immediate-
 ly against the Subject, nor amounting
 to an actual Disturbance of the Peace, and
 committed by common Persons, without
 any Relation to an Office, are either,

1 Such as are infamous, and grossly
 scandalous, or

2 Such as are of an inferior Nature.

Those of the first Kind are,

1 Perjury, and Subornation of Perjury.

2 Forgery.

3 Cheats.

4 Conspiracy.

5 Keeping of a Bawdy-house.

6 Libels.

**Perjury, and Subornation of Perjury are
 either,**

1 By Common Law, or

2 By Statute.

Sec. 1. Perjury, by the Common Law,
 seems to be a willful false Oath by one,
 who being lawfully required to depose the
 Truth in a Proceeding in a Course of Ju-
 stice

S. 1.
 Perjury by
 Common
 Law.

fice swears absolutely, in a Matter of some Consequence to the Point in Question, whether he be believed, or not.

Sect. 2. And first, it is necessary, that the false Oath be taken wilfully, *viz.* with some Degree of Deliberation, and not merely owing to Surprize, or Inadvertency, or a Mistake of a true State of the Question.

S. 2.

Sect. 3. Secondly, The Oath must be either taken in a judicial Proceeding, or in some other publick Proceeding of the like Nature, wherein the King's Honour or Interest are concerned, as before Commissioners appointed by the King, to inquire of the Forfeitures of his Tenants, or of defective Titles wanting the Supply of the King's Patents. But it is not material, whether the Court, in which a false Oath is taken, be a Court of Record, or not, or whether it be a Court of Common Law, or a Court of Equity, or Civil Law, &c. or whether the Oath be taken in the Face of the Court, or out of it before Persons authorized to examine a Matter depending in it, as before the Sheriff on a Writ of Inquiry, &c. or whether it be taken in Relation to the Merits of a Cause, or in a collateral Matter; as where one, who offers himself to be Bail for another, swears that his Substance is greater than it is, &c. But neither a false Oath in a mere private Matter, as in making a Bargain, &c. nor the Breach of a promissory Oath, whether publick or private, are punishable as Perjury.

Sect. 4. Thirdly, The Oath ought to be taken before Persons lawfully authorized to administer it; for if it be taken before

S. 3.

Persons

Persons acting merely in a private Capacity, or before Persons pretending to a legal Authority of administering such Oath, but having in Truth no such Authority, it is not punishable as Perjury; yet a false Oath taken before Commissioners, whose Commission at the Time is in Stridness determined by the Demise of the King, is Perjury, if taken before such Time, as the Commissioners had Notice of such Demise; for it would be of the utmost ill Consequence in such Case to make their Proceedings wholly void.

S. 5. *Sect. 5. Fourthly,* The Oath ought to be taken by a Person sworn to depose the Truth, and therefore a false Verdict comes not under the Notion of Perjury, because the Jurors swear not to depose the Truth, but only to judge truly of the Depositions of others; but a Man may be as well perjured by an Oath in his own Cause, as in an Answer in Chancery, or in an Answer to Interrogatories concerning a Contempt, or in an *Affidavit*, &c. as by an Oath taken by him as Witness in another's Cause.

S. 6. *Sect. 6. Fifthly,* It is not material, whether the Thing sworn be in it self true or false, where the Person, who swears it, in Truth knows nothing of it.

S. 7. *Sect. 7. Sixthly,* The Oath must be taken absolutely and directly, and therefore if a Man only swear as he thinks, remembers, or believes, he cannot be guilty of Perjury.

S. 8. *Sect. 8. Seventhly,* The Thing sworn ought to be some Way material, for if it be wholly foreign from the Purpose, or altogether immaterial, and neither any Way pertinent

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pertinent to the Matter in Question, nor tending to aggravate, or extenuate the Damages, nor likely to induce the Jury to give the reader Credit to the substantial Part of the Evidence, it cannot amount to Perjury, because it is wholly idle and insignificant: As where a Witness introduces his Evidence with an impertinent Preamble of a Story concerning previous Facts no Way relating to what is material, and is guilty of a Falstiy as to such Facts. But it seems a reasonable Opinion, that a Witness may be guilty of Perjury, in Respect of a false Oath concerning a mere Circumstance, if such Oath have a plain Tendency to corroborate the more material Part of the Evidence, as if in Trespass for spoiling the Plaintiffs close with the Defendant's Sheep a Witness swears that he saw such a Number of the Defendant's Sheep in the Close, and being asked how he knew them to be the Defendant's swears that he knew them by such a Mark, which he knew to be the Defendant's, where in Truth the Defendant never us'd any such Mark.

S. 8.

Sect. 9. Eighthly. It does not seem material, whether the false Oath were credited, or not, or whether the Party, in whose Prejudice it was taken, were in the Event any ways damag'd by it, for the Prosecution is not grounded on the Damage to the Party, but on the Abuse of publick Justice.

S. 9.

Sect. 10. Subornation of Perjury by the Common Law is the procuring a Man to take a false Oath amounting to Perjury, who actually takes such Oath, but if the Person incited do not take the Oath, the

S. 9.

Offence of the other amounts not to Subornation of Perjury, yet it is a very high Offence punishable by infamous Punishment, &c.

Perjury
and Subor-
nation of
Perjury by
Statute.
S. 11.

SECT. 11. By 5 El. 9. *Whoever shall unlawfully and corruptly procure any Witness by Letters Rewards, Promises, or by any other sinister and unlawful Means whatsoever, to commit any wilfull and corrupt Perjury in any Matter whatsoever depending in Suit by any Writ, Action, Bill, Complaint, or Information in any Wise concerning any Hereditaments, Goods, Chattels, Debts, or Damages in Chancery, Whitehall, or elsewhere within the King's Dominions of England, or Wales, where any Person shall have Authority by the King's Commission, Patent, or Writ, to hold Plea of Land, or to examine, hear, or determine any Title of Lands, or any Matter or Witnesses concerning the Title, Right, or Interest of any Hereditaments in any Court of Record, antient Demesne Court, Hundred Court, Court Baron, or Stannary Court; or shall unlawfully and corruptly procure or suborn any Witness, who shall be sworn to testify in perpetuam rei memoriam, shall for such Offence, being thereof convicted or attainted, forfeit 40*l*. and if he shall not have Goods or Tenements to that Value, shall be imprisoned half a Year, and stand in the Pillory, &c. And the Person so convicted or attainted shall not be received as a Witness in any Court of Record, till such Judgment against him be reversed.*

S. 12.

SECT. 12. *And if any Person shall either thro' the Procurement of any other, or by his own Act wilfully and corruptly commit any Manner of wilfull Perjury, by a Deposition in any of the Courts before mentioned, or being examined in per-*

Of Perjury.

perpetuam rei memoriam, every such Offender being duly convicted or attainted shall forfeit 20 l. and have six Months Imprisonment, and his Oath shall not be received in any Court of Record, till such Judgment be reversed; and if he shall not have Goods to the Value of 20 l. he shall stand in the Pillory, &c.

Sect. 13. And one Moiety of the said Forfeitures shall be to the King, and the other Moiety to the Party grieved. And as well the Judges of the Courts, wherein such Perjury shall be committed, as the Justices of Assize and Gaol Delivery, and Justices of Peace at their Quarter-Sessions, may inquire of, hear, and determine these Offences. But this Act shall no way extend to any Spiritual Court, but that those, who shall offend therein in Manner aforesaid, shall be punished by the ordinary Laws used in such Courts. Neither shall it restrain any Judge, having absolute Power to punish Perjury before the Statute, but that every such Judge may proceed in the Punishment of such Offence, as he might and used to do before.

Sect. 14. Every Indictment or Action on this Statute must exactly pursue the Words of it, and therefore if it alledge that the Defendant deposed such a Matter falso & deceptive, or falso & corrupte, or falso & voluntarie, without saying voluntarie & corrupte, it is not good, tho' it conclude, that sic voluntarium & corruptum commisit perjurium contra formam Statuti, &c. Also it is said to be necessary expressly to shew that the Defendant was sworn, and that it is not sufficient to say, that tacto per se sacro Evangelio deposuit.

Sect.

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S. 13.

S. 14.

S. 15.

S. 16.

S. 17.

S. 18.

Sec. 15. But there is no Need to shew, whether the Party took the false Oath thro' the Subornation of another, or of his own Act, tho' the Words of the Statute are, *If Persons by Subornation, &c. or their own Act, &c. shall commit wilfull Perjury*, for there being no Medium betwixt the Branches of this Distinction, they seem to be put in *ex abundanti*, and to express no more, than the Law would have implied, and therefore operate nothing.

S. 19.

Sec. 16. It hath been adjudged, that a Man cannot be guilty of Perjury within this Statute in any Case, wherein he may not possibly be guilty of Subornation of Perjury within it, for it is reasonable to give the whole Statute the same Construction; neither can it be well intended, that the Makers of the Statute meant to extend its Purview farther as to Perjury, which they seem to esteem the lesser Crime, than to Subornation of Perjury, which they seem to esteem the greater.

S. 20.

And therefore since the Clause concerning Subornation of Perjury, *mentioning only Matters depending by Writ, Bill, Plaint, or Information concerning Hereditaments, Goods, Debts or Damages, &c.* extends not to Perjury on an Indictment or criminal Information, the Clause concerning Perjury, tho' penned in more general Words, hath been adjudged to come under the like Restriction. Also since the Clause concerning Subornation of Perjury relates only to Perjury by Witnesses, that concerning Perjury shall extend only to the like Perjury, and therefore not to Perjury in an Answer in Chancery, or in swear.

swearing the Peace against a Man, or in a Presentment by a Homager in a Court-Baron, or in a Wager of Law, or in swearing before Commissioners of Inquiry of the King's Title to Lands, &c. And by some a false *Affidavit* against a Man in a Court of Justice, is not within the Statute; but if such *Affidavit* be by a third Person, and relate to a Cause depending in Suit before the Court, and either of the Parties in Variance be grieved, hindered, or molested in Respect of such Cause, by Reason of the Perjury, it may strongly be argued, that it is within the Purview of the Statute. Also it seems the more plausible Opinion, that a false Oath before the Sheriff on a Writ of Inquiry of Damages is within the Statute.

S. 21.

Sett. 17. It hath been collected from the Clause, which gives an Action to the Party grieved, that no false Oath is within the Statute, which doth not give some Person a just Cause of Complaint, and therefore that, if the Thing sworn be true, tho' it be not known by him that swears it to be so, the Oath is not within the Statute, because it gives no just Cause of Complaint to the other Party, who would take Advantage of another's Want of Evidence, to prove the Truth. Also from the same Ground no false Oath can be within the Statute, unless the Party, against whom it was sworn, suffered some Disadvantage by it; and therefore in every Prosecution on the Statute you must set forth the Record, wherein you suppose the Perjury to have been committed, and must prove at the

S. 22.

P

Trial,

Of Perjury.

Trial, that there is such a Record, either by actually producing it, or an attested Copy : Also in the Pleadings you must not only set forth the Point, wherein the false Oath was taken, but must also shew how it conduced to the Proof or Disproof of the Matter in Question. And if an Action on the Statute be brought by more than one, you must shew how the Perjury was prejudicial to each of the Plaintiffs. But it seems that a Perjury, which tends only to aggravate or extenuate the Damages, is as much within the Statute, as a Perjury, that goes directly to the Point in Issue ; and a Perjury in a Cause, wherein an erroneous Judgment is given, is a good Ground of a Prosecution upon the Statute, till the Judgment be reversed.

C H A P. LXX.

Of Forgery.

Forgery is either by the Common Law, or by Statute.

Forgery by Common Law. *Señ. 1.* Forgery by the Common Law seems to be an Offence in falsely and fraudulently making or altering any Matter of Record, or Deed, or Will, or any authentick Matter of a publick Nature ; as a Privy Seal, or a Licence from the Barons of the Exchequer to compound a Debt, or

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a Certificate of Holy Orders, or a Parish Register, or a Protection from a Parliament Man; and it is said not to be material, whether the Person, in whose Name it is counterfeited, were in Truth a Member of Parliament at the Time, or not. But it is said, that the Counterfeiting of Writings of an inferior Nature is not properly Forgery: And some have said, that the Counterfeiting a Receipt under a Man's Hand, and Receiving his Rent under Colour of it, is not punishable at all by any Criminal Prosecution. But *Quære*.

S. 7.

S. 10.

Sect. 2. It is not necessary to make a Man Guilty of Forgery, that either the Hand or Seal of any one be counterfeited; for it is Forgery for one, who hath made a Conveyance of his Land, afterwards to make a second of a false Date prior to that of the former, in Order by such Fraud to defeat it. Also it is Forgery for a Man, who is order'd to draw a Will for a sick Person, to insert Legacies in it of his own Head: Also it is Forgery to insert in an Indictment the Names of Persons, against whom it was not in Truth found; or to write a Release on the fair Paper of a Letter, signed by J. S. and then to cut off the other Writing, and fix the Seal under the Release. And it may be argued from the same Reason, that it is Forgery to make a fraudulent Alteration of the Form of a true Deed in a material Part; as by making a Lease of the Manor of Dale appear to be a Lease of the Manor of Sale, by changing the Letter D into an S; or by making a Bond for 500*l*. in

See the next Chapter.

St. 2.

Figures appear to have been for good by adding a Cypher. But *Quere*; for Sir Edward Coke seems to say, that a Deed so altered is more properly to be called a false than a forged Writing, because it is not forged in the Name of another, nor his Seal, nor Hand counterfeited.

- Sect. 3.* He who writes a Deed in another's Name, and seals it in his Presence, and by his Command, seems to be Guilty of no Fault at all. Neither is he Guilty of Forgery, who barely writes a Will for another without his Direction; nor he, who without any ill Design razes out the Word *Libris* in a Bond made to himself, and inserts *Marais*, for the Prejudice is only to himself; nor he, who barely is Guilty of a *Non-est*, as by omitting a Legacy out of a Will, which he is directed to draw for another; but perhaps in these two last Cases the Party is Guilty of a Misdemeanour, though not of Forgery. And, if the Omission of a Bequest to one Man cause a material Alteration in the Bequest to another, it is said that it amounts to Forgery; as where the Omission of the Devise of an Estate for Life to A. causes a Devise of the same Lands to B. to pass a present Estate, which otherwise would have passed a Remainder only.

Forgery by Statute. *S. 26.* *Sect. 4.* By 5 Eliz. 14. If any Person, upon his own Head and Imagination (which is sufficiently expressed by the Words *supra caput suum proprium*, &c.) or by false Conspiracies and Fraud with others, shall wittingly, subtilly, and falsely forge or make, or subtilly cause, or willingly assent to be forged or made any false Deed,

Deed, Charter, or Writing sealed, (which is not sufficiently alledged by shewing that the Writing was indented, without expressing that it was sealed) Court-Roll, or Will in Writing, to the Intent that the State of Freehold or Inheritance of any Person, of, in, or to any Hereditament, Freehold, or Copyhold, or the Right, Title, or Interest of any Person of, in, or to the same, shall or may be molested, troubled, defeated, recovered, or changed (which Clause extends to a false Customary of a Copyhold Manor under the Seals of several Tenants, setting forth diverse false Customs, tending to the Disinheritance of the Lord, &c. and extends also to the Forgery of a Lease for Years, or of the Grant of a Rent-charge for Years by one seized of a Freehold or Inheritance, notwithstanding the next Clause of the Statute expressly mentions Forgeries, whereby one may claim an Interest for Term of Years, &c.) or shall pronounce, publish, or shew forth in Evidence any such false and forged Deed, &c. as true, knowing the same to be false and forged, as aforesaid, except he do it as a Lawyer for his Client, being not a Party, nor privy to the Forgery) and shall be thereof convicted, either upon Action on the Statute, at the Suit of the Party grieved, or otherwise according to Law, he shall pay to the Party grieved, double Costs and Damages, and be set on the Pillory, and there have his Ears cut off, and his Nostrils slit and cut, and seared with a hot Iron, and shall forfeit the Profits of his Lands for Life, and suffer perpetual Imprisonment, &c.

S. 26.

S. 17.

S. 18.

SECT. 5. And if any Person on his own Head or Imagination, or by false Conspiracy, &c.

- shall wittingly, subtilly and falsly forge or make, or cause or assent to be forged and made any
- §. 19. false Charter, Deed, or Writing (which includes a Will purporting a Bequest of such Estate, as is mentioned in this Clause) to the Intent that any Person shall or may claim any Estate or Interest for Term of Years, of, in, or to any Hereditament, not being Copyhold, or any Annuity in Fee-Simple, or Fee-Tail, or
- §. 22. for Life, or Years, or any Obligation (which Word includes a Statute-Merchant, or a Recognisance in the Nature of a Statute-Staple, but extends not to a Statute-Staple, because it needs not the Seal of the Party, but only the Seal of the Staple), or Bill obligatory, or any Acquittance, Release, or other Discharge of any Debt, Accompt, Action, Suit, Demand, or other Thing personal (but this extends not to the Forgery of a Gift of mere personal Chattels) or shall pronounce, publish, or give in Evidence (except as is before excepted) any such false or forged Charter, &c. knowing the same to be false and forged, and shall be thereof convicted as aforesaid, he shall pay to the Party grieved double Costs and Damages, (which in the Case of a forged Release of an Obligation shall be governed
- §. 24. by the Penalty, and not by the true Debt appearing in the Condition) and shall be set in the Pillory, and there have one of his Ears cut off, and also suffer a Year's Imprisonment.

§. 25. Sect. 6. And if any Person convicted or condemned of any of these Offences shall Eftsoons commit any of the said Offences (viz. within either Branch of the Statute, tho' not the same whereon the first Conviction was) he shall be adjudged a Felon without the Benefits of the Clergy.

Sect.

Sect. 7. And Justices of Oyer, and Justices of Assise shall bear and determine these Offences.

Sect. 8. But this Act shall not extend to any Ordinary, &c. for putting his Seal of Office, &c. to any Will, &c. not knowing it to be false or forged; nor to any Proctor, &c. for Writing, &c. any Proxy, &c. for the Appearance of any Person, &c. nor to any Arch-Deacon, or Official, for putting their Authentick Seal to such Proxy, &c. nor to any Person, who shall plead or shew forth any Deed or Writing exemplified under the Seal of any authentick Court; nor to any Person, who shall cause any Seal of any Court to be set to any such Deed, Charter, or Writing enrolled, not knowing the same to be false or forged.

Sect. 9. A Forgery of a Lease of Lands in Ireland, is not within this Statute. S. 20.

Sect. 10. He, who is truly informed by another that a Deed is forged, is said to be in Danger of the Statute, if he afterwards publish it as true, tho' the Words be, *If any one shall publish, &c. such Deed, &c. knowing it to be forged, &c.* S. 21.

Sect. 11. If the Defendant in an Indictment of Trespass, Forgery, and Publication of a Deed, be found guilty *de transgressionibus & forgeria predictis prout superius in Indictamento supponitur*, he is found Guilty of the Whole, because the Whole is included in the Words *de transgressionibus predictis*. S. 27.

C H A P. LXXI.

Of Cheats.

Cheats are either punishable by Common Law, or by Statute.

- Señ. 1.* Any deceitful Practice in defrauding, or endeavouring to defraud a Man of his known Right by some artful Device, notoriously contrary to the plain Rules of common Honesty, seems generally to be punishable as a Cheat at Common Law, as playing with false Dice, or causing an illiterate Man to execute a Deed to his Prejudice, by falsely reading it over to him, or suppressing a Will, or levying a Fine, or confessing a Judgment in another's Name, without his Privy. And Offences of this Kind are regularly punishable with Fine and Imprisonment, and sometimes with infamous Punishment, at the Discretion of the Judges, according to the Circumstances of the Case.
- Señ. 2.* But the Imposing on a Man in a Bargain by bare Telling of a Lie, or the Receiving of Money from one Man to another's Use, or on a false Pretence of an Order from him, and other such like private Deceits seem generally not to be punishable at all by a criminal Prosecution.

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Sect. 3. By 33 H. 8. 1. If any Person shall falsely and deceitfully get into his Hands or Possession any Money, or other Thing, of any other Person, by Colour and Means of any privy false Token, or counterfeit Letter made in another Man's Name, to a special Friend or Acquaintance, for the Obtaining of Money, &c. from such Person, and shall be thereof convicted by Witness before the Lord Chancellor, or Justices of Assise, or of Peace, or by Action, he shall suffer such Punishment by Imprisonment, Pillory, or otherwise by corporal Pain, except Pains of Death, as shall be appointed by those, before whom he shall be so convicted. And by a Precedent in Croke's Re-
 port, it seemed that he may also be fin'd; 564. S. 6.
 but Sir Edward Coke holds the contrary. 3 Inf. 123.

Sect. 4. By the said Statute, the Justices of Assise, or two Justices of the Peace, whereof one to be of the Quorum, may convene by Process, or otherwise, to the Assises, or Sessions, any Person suspected of such Offence, and may commit or bail him, &c.

C H A P. LXXII.

Of Conspiracy.

Sect. 1. **I**T is declared by 33, or rather 21 Ed. 1. That Conspirators be they that do confederate or bind themselves by Oath, Covenant, or other Alliance; that every of them shall aid and bear the other falsely and maliciously to indict, or cause to indict, or falsely to
 move

move and maintain Pleas, as also such as cause Children within Age so appeal Men of Felony, whereby they are imprisoned and sore grieved; and such as retain Men in the Country with Liveries or Fees to maintain their malicious Enterprizes: And this extendeth as well to the Takers, as to the Givers. And Stewards, and Bailiffs of great Lords, who by their Seigniorie, Office, or Power, undertake to bear or maintain Quarrels, Pleas, or Debates, that concern other Parties, than such as touch the Estates of their Lords or themselves.

Sect. 2. Notwithstanding this Statute seems expressly to include all unlawful Confederacies falsely and maliciously to indict a Man under the Notion of Conspiracy, whether any Act be done in Prosecution of such Confederacies or not, yet it is laid down as a general Rule in many Books, that no Writ of Conspiracy lies for a malicious Indictment, or Appeal, unless the Party be lawfully acquitted, and it is certain, that there is no formed Writ in the Register for a Conspiracy, in prosecuting a malicious Indictment or Appeal, which hath not either the Words *Quousq; acquietatus fuisset*, or *quietus recessit*: Yet if this Matter be strictly enquired into, it seems difficult to give a Reason, why these Words should be more necessary in a Writ for a Conspiracy in prosecuting an Indictment or Appeal, than in a Writ for a Conspiracy in prosecuting a groundless civil Action, in which it appears from the Register, that they are not necessary. However, an Action on the Case in the Nature of a Writ of Conspiracy, doth certainly

tainly lie for a Conspiracy to prosecute a false and malicious Indictment, tho' nothing farther be done in Prosecution of it. Also it may strongly be argued, that an Indictment or Information lies upon the Statute for such a Conspiracy, whereon nothing farther is done; for there seems no Reason why the stated Form of a Writ of Conspiracy should restrain a Proceeding by Indictment or Information. However, since Offences of this Kind are certainly punishable under the Notion of Confederacies, by the Common Law, which prohibits all Combinations whatsoever, any way wrongfully to prejudice a third Person; as where divers combine together by indirect means to impoverish a Man, or to charge him to be the reputed Father of a Bastard Child, &c. it seems most advisable to proceed this Way against Offences of this Kind.

Sect. 3. It is no Justification of a Confederacy to carry on a false and malicious Prosecution, that the Indictment, &c. preferred in Prosecution of it was insufficient; or that the Matter of it did import no Manner of Scandal; or that the Court had no Jurisdiction of the Cause; or that nothing more was intended, but only to give Testimony in a legal Course of Justice against the Party, to whose Prejudice the Confederacy is supposed to have been formed.

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Sect. 4. Yet no one is liable to any Prosecution whatsoever, in respect to any Verdict given by him in a criminal Matter, either upon a Grand or Petit Jury. Neither

S. 5.

Of Conspiracy.

- s. 6. ther are the Judges of any Court of Record liable to any Prosecution, except by the Parliament for any Thing done by them openly in Court as Judges.

- Sect. 5. Neither is any Confederacy within the Danger of the Statute, unless it be both false and malicious, and therefore if the Defendant in an Indictment of Murder be found Guilty of Homicide *se defendendo*, or by Misadventure, or get off by pleading a Pardon; or if it be proved on an Indictment of Larceny, whereon the Defendant is acquitted, that a Larceny was committed at such a Time and Place, and that the Defendant was found at such Time and Place under suspicious Circumstances; or if it be prov'd on an Indictment for feloniously carrying away a Woman with Force, whereon the Defendants are acquitted, that such Woman was in such Manner carried away, and that the Defendants were found riding armed in a warlike Manner, and following after those, who did carry her away, and were generally reported to have been of the Company, the Prosecutors of such Indictments ought not to be punished as Conspirators.
- s. 7.

- Sect. 6. It is clear, that one Person alone cannot be Guilty of a Conspiracy, within the Meaning of this Statute, and therefore the Acquittal of all the Defendants but one, is an Acquittal of that one also. Neither is such a Prosecution maintainable against a Husband and Wife only, because they are but as one Person in Law, and are presumed to have but one Will. But an Action on the Case in the Nature of a Conspiracy
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spiracy may be brought against one only. Also if such Action be brought against several Persons, and all but one are acquitted, yet Judgment may be given against that one only.

Sect. 7. He, who is convicted of Conspiracy at the Suit of the Party, shall only have Judgment of Fine and Imprisonment; and to render to the Plaintiff his Damages. But he, who is convicted at the King's Suit of a Conspiracy to accuse another of a Capital (or, as some say, of any) Crime, shall have Judgment, that he shall lose the Freedom and Franchise of the Law (which disables him to be of a Jury, or a Witness, or even to appear in Person in any of the King's Courts) and also that his Houses, Lands and Goods, shall be seized into the King's Hands, and estreped and wasted, his Trees rooted up and arrased, and his Body imprisoned. And this is called a Villainous Judgment, and is given by the Common Law, and not by any Statute.

C H A P. LXXIII.

Of Libels.

Sect. 1. **A** Libel, in the strict Sense of the Word, is taken for a malicious Defamation, in Printing or Writing, tending either to blacken the Memory of one that is dead, or the Reputation of one that is alive, and to expose him to publick Hatred, Contempt, or Ridicule.

Sect. 2. But in a larger Sense it may be applied to any Defamation whatsoever, expressed by Signs or Pictures; as by fixing up a Gallows at a Man's Door, or painting him in an ignominious Manner, which being in all Respects of as ill Consequence, as a Libel by Writing or Printing, seems equally criminal.

Sect. 3. A Scandal expressed by Way of Irony is no less criminal, than if it were directly spoken; as where a Writing in a taunting Way says of one, who has done many publick Charities, *You will not play the Jew, nor the Hypocrite*, and so goes on in a Strain of Ridicule, to insinuate that what he has done is owing to vain Glory, &c.

S. 4. Or where a Writing, pretending to recommend the Characters of several great Men to publick Imitation, instead of taking Notice of those Qualities, which they are generally esteemed for, mentions such only, which their Enemies charge them with the Want of, &c.

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Sett. 4. A defamatory Writing, expressing only one or two Letters of a Name in such a Manner, that from the obvious Construction of the whole Sentence it cannot but be plainly understood of such a particular Person, and would be mere Nonsense, if strained to any other Meaning, is as properly a Libel, as if it had expressed the whole Name at large; for it brings the utmost Contempt upon the Law, to suffer its Justice to be eluded by such trifling Evasions.

S. 5.

Sett. 5. It is far from a Justification of a Libel, that it is true, or that the Party libelled has no good Reputation, &c. for the more Appearance there is of Truth in it, so much the more provoking it is.

S. 6.

Sett. 6. A Writing, which defames private Persons only, is as much a Libel, tho' not so highly aggravated, as that, which defames Persons of a publick Character.

S. 7.

Sett. 7. But it seems, that no false or *Vid. infra.* scandalous Matter contained in a Petition

S. 11.

to a Committee of Parliament, or in Articles of the Peace, or in any other Proceeding in a regular Course of Justice, will amount to a Libel, if the Court had a Jurisdiction of the Cause, or, as some say, tho' it had no Jurisdiction, if the Prosecution were carried on *bona fide*, with an Intent to seek a legal Redress of the Injury complained of. But whether the Court had Jurisdiction, or not, if the Complaint were carried on without any Colour of Right, and not with a Design to go thro' with it, but only to expose the Defendant's Character, under the Shew of a legal Proceeding,

S. 8.

ceeding, it seems that such a Mockery of the publick Justice rather aggravates the Offence, than makes it cease to be one. But it seems that no Presentment by a Grand Jury can amount to a Libel, because it would be of the utmost ill Consequence any way to discourage them from making their Inquiries with that Freedom, which is necessary for the publick Good, by making them liable to Prosecutions on Account of such Inquiries.

Sect. 8. A Writing full of the obscenest Ribaldry, but no way reflecting on any Person, or the Government, is not indictable, but it seems to be most properly punished by binding the Author to his Good Behaviour.

S. 9. Not only he who composes, or procures another to compose a Libel, but also he, who publishes, or procures another to publish it, is liable to be punished for it. And it is said, not to be material, whether he, who disperses a Libel, knew any Thing of its Contents, or not: Also it is said, that if he who hath read a Libel, or heard it read, do afterwards maliciously read or repeat any Part, of it, he is Guilty of an unlawful Publication of it. Also the bare Writing or Copying of a Libel is *prima facie* criminal; and the having the written Copy of a Libel publickly known, is *prima facie* an Evidence of Publication.

Salk. 417,
418, 419.

Sect. 10. Also the Sending of a Letter to a Man full of provoking Language, without publishing it, is highly punishable.

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as manifestly tending to a Disturbance of the Peace. S. 11.

Señ. 11. He who delivers a Paper in Nature of a Petition to a Committee of Parliament, full of Reflections on the Party complained of to any Persons, who are not Members of Parliament, is punishable as the Publisher of a Libel, in respect of such Dispersing: But the Printing a Copy of such a Petition, and Delivering it to the Members of the Committee is justified by the Order and Course of Parliamentary Proceedings. S. 12. 15.

Señ. 12. The Reading a Libel in the Presence of another, without knowing it before to be a Libel; or the Laughing at a Libel, read by another; or the Saying that such a Libel is made of *J. S.* whether spoken with, or without Malice, amounts not to a Publication of it. S. 13.

Señ. 13. It hath been holden, that he, who repeats Part of a Libel in Merriment, without any Malice or Purpose of Defamation, is no way punishable; but *Quære*: For the Injury to the Party libelled is far from being lessened, by being made a Jest of. S. 14.

Señ. 14. The proper Punishment of a Libel is Fine, and such corporal Punishment, as in Discretion shall seem proper from the Circumstances of the Case.

C H A P. LXXIV.

*Of the Offence of keeping a
Bawdy-house.*Vid. supra
Ch. i. S. 7.

THE Offence of keeping a House, or but a Lodging in a House, for Bawdry, is punishable by Fine, and Imprisonment, and such corporal Punishment, as in Discretion shall seem proper, in respect of its Tendency, to corrupt the Manners of both Sexes, and to disturb the Peace, &c.

C H A P. LXXV.

Of Common Nuisances.

Offences not Capital, more immediately against the Subject, not amounting to an actual Disturbance of the Peace, nor relating to an Office, and of an inferior Nature to the six Offences last treated of, are either,

- 1 Such as more immediately affect the Publick, or
- 2 Such as more immediately affect the Interests of particular Persons.

Those that more immediately affect the Publick, are

- 1 Common Nuisances
- 2 Monopolies.
- 3 Forestalling, Ingrossing, and Regrating.
- 4 Barratry.

Sec. 1. A Common Nuisance is an Offence against the Publick, either by doing a Thing to the Annoiance of the King's Subjects in general, or by neglecting to do a Thing, which the Common Good requires. But Annoiances to the private Interests of particular Persons only are not punishable by a publick Prosecution. And therefore an Indictment for surcharging such a Common, or inclosing such a Piece of Ground, or disturbing such a Water-course, or doing any other Act, not apparently of a publick Nature, to the Nuisance of the Inhabitants of such a Town, or of J. S. and his Tenants, is not good; but an Indictment for not repairing a Bridge *per quod ligei domini Regis transire non possunt, &c. ad nocumentum eorundem*, is sufficient, for by the King's liege People shall be understood all his liege People.

Sec. 2. Also an Indictment for doing a Thing which plainly appears immediately to tend to the Prejudice of Religion, or of the King; as for Breaking the Walls of a Church, or imbezilling the King's Treasure, &c. is good, without expressly laying it as a common Grievance.

S. 1.

S. 2.

S. 3.

S. 4.

S. 5. *Sect. 3.* Also it is said, that the Indictment of a common Scold, by the Words *communis Rixatrix*, is good, tho' it conclude *ad commune nocumentum diversorum*, instead of *omnium*; for it cannot but be a common Nufance. And from the same reason it seems, that an Indictment with such a Conclusion, for a Nufance to a River, plainly appearing to be publick and navigable, or to a way, plainly appearing to be a Highway, is sufficient.

S. 6. *Sect. 4.* It seems clear, that common Gaming-houses, and it is said that publick Stages for Rope-dancers, &c. are indictable as common Nufances. And it seems, that Play-houses come under the like censure, when they pervert their original Institution, by recommending vicious and loose Characters, under beautiful Colours, to the Imitation of the people, and making a Jest of Things commendable, serious, and useful.

S. 8. *Sect. 5.* A Dovecote is no common Nufance, for if it were no Prescription could justify it. But a Dovecote newly erected in a Manor, without the Lords Licence, is said to be a good Ground for an Action on the Case at the Suit of the Lord.

S. 9. *Sect. 6.* A Gate newly set up in a Highway, is a common Nufance, but an ancient one may be justified by Prescription, for it may be intended, that it is as ancient as the Highway, and set up by Agreement, at the first laying out the Road.

S. 10. *Sect. 7.* A Brew-house, Glass-house, or Stry for Swine, set up in such inconvenient Parts of a Town, that they cannot but greatly incommode the Neighbourhood, are common Nufances, and a Tallow chandlers Shop seems

Salk. 456.
458. 460.
3 Mod. 138

seems to come under the like Rule. But *Quæ-
re.* And it is said to be a common Nufance
to divide a House in a Town for poor Peo-
ple to inhabit in, by reason whereof it will
be more dangerous in Time of Infection of
the Plague.

S. 11.

Sect. 8. It is a common Nufance, to di-
vert Part of a publick navigable River, where-
by its Current is weakened.

S. 11.

Sect. 9. Any one may justify pulling down,
or otherwise destroying a common Nufance,
as a new Gate, or House erected in a High-
way: And it is of late holden, that there is
no need in pleading such Justification, to
shew that as little Damage was done, as
might be.

S. 12.

Sect. 10. If a River be stopped, to the
Nufance of the Country, and none appear
bound by Prescription to clear it, it is said,
that those, who have the Piscary, and the
neighbouring Towns, who have a common
Passage and Easement in it, may be compel-
led to do it.

S. 13.

Sect. 11. All Nufances in general seem
punishable with fine and Imprisonment; also
a common Scold is punishable by the Duc-
king-stool; and it is said, that one convicted
of a Nufance to the Highway may be com-
manded by the Judgment, to remove it at
his own Costs, &c.

S. 14.

Q 3 CHAP.

C H A P. LXXVI.

Of Nuisances relating to the Highways.

Of several
Sorts of
Ways.

There are three Kinds of Ways,

- 1 A Foot-way, called in Latin *Iter*.
- 2 A Pack and Prime-way, which is both a Horse and a Foot-way, called in Latin *Actus*.
- 3 A Cart-way, call'd in Latin *Via*, or *Aditus*, which contains the other two, and also a Cart-way, and is called *via regia*, if it be common to all Men, and *communis strata*, if it belong only to some Town, or private Person.

What shall
be called a
Highway.

S. 1.

Sect. 1. **I**T seems, that any one of the said Ways, which is common to all the King's Subjects, whether it lead directly to a Market-town, or only from Town to Town, may properly be call'd a Highway; and that any such Cart-way may be call'd the King's Highway; and that a River common to all Men, may also be call'd a Highway; and that Nuisances in any of the said Ways are punishable by Indictment, &c. for otherwise they would not be punished at all, for they are not actionable, unless they cause a special Damage to some particular Person, because if such Action would lie, a Multiplicity

Of Nuisances relating to the Highways.

231

city of Suits would issue. But it seems, that a Way to a Parish-Church, or to the Common Fields of a Town, or to a Village, which terminates there, may be called a private Way, because it belongs not to all the King's Subjects, but only to the particular Inhabitants of such Parish, House, or Village, each of which, as it seems, may have an Action for a Nuisance therein.

Sect. 2. It is said, that if the People have used, Time out of Mind, when the Roads are bad, to go by Outlets on the Land, adjoining to a Highway in an open Field, such Outlets are Parcel of the Highway, and therefore if they be sown with Corn, and the Tract foundrous, the King's Subjects may go upon the Corn.

S. 2.

Sect. 3. An antient Highway cannot be changed without an Inquisition found, on a Writ of *ad quod damnum*, that such Change will be no Prejudice to the Publick; and it is said that if one change a Highway, without such Authority, he may stop the new Way whenever he pleases; neither can the King's Subjects, in an Action brought against them for going over such new Way, justify generally as in a common Highway, but ought to shew specially, by way of Excuse, how the old Way was obstructed and a new one set out; neither are the Inhabitants bound to keep Watch in such new Way, or to repair it, or to make Amends for a Robbery committed in it: But it is certain, that a Highway may be changed by the Act of God, as where a Water, which has been an antient Highway, by Degrees changes its Course.

S. 3.

S. 4.

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Sect.

*At whose
Charge,
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whom
Highway
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paired.*

S. 5.

Sect. 4. Of Common Right, the general Charge of repairing Highways, lies on the Occupiers of the Lands, in the Parish wherein they lie; but it is said that the Tenants of the Lands adjoining, are bound to scour their Ditches, and it is certain that particular Persons may be bound to repair the Highway, by Reason of an Inclosure or Prescription.

S. 6.

Sect. 5. And first by Inclosure, as where the Owner of Lands not inclos'd, next adjoining to the Highway, incloses his Lands on both Sides of it, in which Case he is bound to make a perfect good Way, and shall not be excus'd by making it as good as it was before the Inclosure, if it were then any way defective, because by the Inclosure he takes from the People the Liberty of going over the Lands adjoining to the common Track; also it is said, that if one inclose Land on one Side of an Highway, which anciently has been inclos'd of the other, he ought to repair all the Way, otherwise but half the Way; And wherever a Man laies open the Inclosure which bound him to repair the Highway, he shall be freed from the Charge of repairing it.

S. 7.

Sect. 6. Secondly, particular Persons may be bound to repair a Highway by Prescription; and it is said, that a Corporation aggregate may be charg'd by a general Prescription, that it ought and hath us'd to do it, without shewing any Consideration, in respect whereof they had us'd to do it, because such a Corporation never dies, neither is it any Plea, that they have always done it out of Charity; but it is said, that such a general

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neral Prescription is not sufficient to charge a private Person, because no Man is bound to do a Thing, which his Ancestors have done, unless it be for some special Reason, as having Lands descended to him holden by such Service, &c. But it seems that an Indictment charging a Tenant of Lands in Fee, with having used of Right to repair such a Way *ratione tenuræ terræ suæ*, without adding that his Ancestors, or those, whose Estate he hath, have so done, is sufficient, for 'tis implied.

Sect. 7. However, whether a private Person be bound to repair a Highway, by Inclosure or Prescription, yet the Parish cannot take Advantage of it on the general Issue, but must plead it specially.

S. 9.

Sect. 8. By 2 & 3 Ph & Mar. 6. and 22 Car. 2. 12. Every Person for every Ploughland which he shall occupy in a Parish (which by 7 & 8 W. 3. 29. is taken for Woodland or other Land, to the Value of fifty Pounds per Annum); and every other Person keeping there a Draught or Plough, shall find and send at every Day and Place, to be appointed for the Amending of the Ways, one Wain or Cart furnished after the Manner of the Country, with Cattle and other Necessaries, meet to carry Things convenient, and two able Men, on Pain of every Draught making Default, 10 s. and every Housholder, and also every Cottager and Labourer, able to Labour, and, being no hired Servant by the Year, shall by themselves, or one sufficient Labourer for every of them, upon every of the said Days work and travel in the Amendment of the said Highways, on Pain of every Person making Default, for each Day 1 s. 6 d. And if the said Carriages, or any of them shall

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S. 10.

Of Buſances relating to the Highways.

shall not be thought needful on any of the ſaid Days, then every ſuch Perſon, that ſhould have ſent any ſuch Carriage, ſhall ſend for it two able Men, on Pain for every Man not ſo ſent 12 d. And every ſuch Perſon and Carriage ſhall bring with them Shovels, Spades, &c. and ſhall work eight Hours on each of the ſaid Days, unleſs they ſhall be otherwiſe licens'd by the Surveyors, or one of them.

- S. 11.** Sect. 9. By 18 El. 10. Par. 2. Every Perſon not dwelling in London, who ſhall be aſſeſſed to the Payment of a Subſidy to 5 l. in Goods, or 40 s. in Lands, and being chargeable to the Highways by any former Law, but as a Cottager, ſhall ſend two Men yearly, to labour in the Highways at the Times appointed. And by the ſame Statute, Par. 3. Every other that ſhall occupy a Plough land, lying in ſeveral Pariſhes, ſhall be chargeable to the Ways within the Pariſh, where he dwells, as far forth, and in ſuch Manner, as any Perſon having a Plough land in any one Pariſh is chargeable.
- S. 12.**

- S. 14.** Sect. 10. And by the ſaid Statute of 22 Ca. 2. 12. Par. 8. In ſuch Places where there is no Uſe of Carts and Teams for the Amendment of the Highways, but the Uſage is, to carry Stones or other Materials on Horſes, or by other Kinds of Carriages, the Inhabitants ſhall ſend in ſuch Horſes and Carriages under the like Directions and Penalties, &c. as by any former Statute for Repairing the Highways are appointed for Carts and Teams.

- S. 15.** Sect. 11. Clergymen are within theſe Statutes, in reſpect of their ſpiritual Poſſeſſions, as much as any other Perſons, in reſpect of any other Poſſeſſions: And he who keeps a Draught, ought to ſend a Team, though he

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Of Nuisances relating to the Highways.

235

occupy no Land in the Parish; and in like Manner he who occupies a Plough-land, ought to send a Team, though he keep no Draught: And the Owner of Lands, that will neither let them, nor occupy them, shall be as much charged, as if he actually occupied them; for the Publick shall not suffer by his Negligence. And it is said, that he who keeps a Draught, and but two Horses, ought to attend with them at the Times appointed, and to carry such Loads as they are able to draw.

S. 16.

S. 17.

Sett. 12. It is no Excuse for Parishioners indicted at Law, for not Repairing their Highways, that they have done their full Work required by Statute; for the Statute being in the Affirmative doth not abrogate any Provision of this Kind by the common Law.

S. 18.

Sett. 12. By 22 Ca. 2. 12. Par. 10, 11. and 3 & 4 W. & M. 12. Where the Justices of Peace at their Sessions shall be satisfied, that the common Highways, Causeys, Bridges, Streets, or Pavements, within their Jurisdiction, within any Parish, &c. cannot be sufficiently repaired, without the Help of those Acts, one or more Assessments, upon all and every the Inhabitants, Owners, and Occupiers of Hereditaments, or personal Estates, usually rateable to the Poor, within any such Parish, &c. shall be made, levied, collected, and allowed, by such Persons, and in such Manner, as such Justices at such Sessions shall appoint: And the Money raised shall be employed and accounted for, according to the Direction of such Justices, in the Repairing, Paving, and Cleansing such Highways, &c. And the said Assessments shall be levied by Distress and Sale of Goods. Provided that

S. 20.

Rate for
the High-
ways by
the general
Sessions of
the Peace.

Of Distances relating to the Highways.

no such Assessments shall in any one Year exceed the Rate of 6 d. in the Pound of the yearly Value of any Hereditament, nor the Rate of 6 d. for 20 l. in personal Estate. And by 7 & 8 W. 3. 29. If any Inship, Liberty, Precinct, or Vill, shall have levied and employed 6 d. in the Pound for the Repairs of their Highways, and yet the same are not sufficiently repaired, the Justices of Peace at their special Sessions, to be held every four Months, for the Highways, may order the whole Parish to contribute.

S. 21.

Sect. 13. It is recited by 3 & 4 W. & M. 12. That diverse Parishes and Townships, not having Materials sufficient for the Repairing of their Highways, the Surveyors had been forced to lay out their own Money for the Buying such Materials, and yet had no Remedy for their Re-imbursement: And thereupon it is enacted, that

S. 22.

Surveyors
reimbursed

on Notice given by the Surveyors to the Justices of Peace at their special Sessions, and Oath made of what Money they have so expended upon Repairing the said Highways, any two of the Justices, at their special Sessions, may by Warrant cause a Rate to be made for the Re-imbursement of the said Surveyors upon the Inhabitants of the Place, according to the Method prescribed by 43 Eliz. which Rate being confirmed by the said Justices in their special Sessions, shall be collected by the said Surveyors: And if any refuse to pay the Moneys so assessed, the same shall be levied by the said Surveyors, by Distress and Sale of Goods, &c.

S. 23.
Fines how
applied.

Sect. 14. By 3 & 4 W. & M. 12. No Fine, Issue, Penalty, or Forfeiture, for not repairing any Highway, shall be returned into any Court, but shall be levied and paid to the Surveyors of the Place, to be applied towards the Repair of such Highway. And the like is generally enacted by

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by subsequent Statutes, relating to the Highways. And by the said Statute of 3 & 4 W. & M. 12. If any Fine, &c. imposed on any Place, for not repairing the Highways, shall be levied on any one, or more of the Inhabitants of such Place, such Inhabitants may complain to the Justices of Peace, at their special Sessions; and any two of such Justices may by Warrant, according to the Form aforesaid, cause a Rate to be made, for the Reimbursing such Inhabitants, which Rate made, being confirmed, as aforesaid, shall be collected by the Surveyors, who within a Month after such Confirmation, shall pay to such Inhabitants the Money so levied on them.

Inhabi-
tants re-
imbursed.
See the
precedent
Section.

Sect. 15. By 22 Ca. 2. 12. Par. 2. All Persons intrusted with Lands, for the Maintenance of Causeys, Pavements, Highways, or Bridges, shall let them at the most improved yearly Value, without Fine: And the Justices of Peace in their Sessions, shall inquire by such Means as they shall think fitting into the Value of such Lands, and order the Improvement and Employment of the Rents and Profits, according to the Will of the Donors, if they find that the Trustees have been negligent or faulty in their Trust; except such Lands have been given to such Uses, to any College, or Hall, in either University, having Visitors, &c.

Trust
Lands for
the High-
ways.

S. 25.

Sect. 16. By the Statute of Winchester, Ch. 5. Highways leading from one Market-town to another shall be enlarged, so that there be neither Dike, Tree, nor Bush, whereby a Man may lurk to do Hurt, within two hundred Foot of either Side: But this shall not extend unto any great Tree, &c. And if by Default of the Lord, who will not avoid such Dike, &c. any Robberies be done, the Lord shall be answerable; and if Murder be done, he shall make Fine, at the King's Plea-

Highways
enlarged.
S. 26.

Of Nuisances relating to the Highways.

Pleasure: And if he be not able to fell the Under-woods, the Country shall aid him. And in the King's Demesne-Lands and Forrests, the Way shall be enlarged, as is aforesaid. And if a Park be taken from the Highway, the Lord shall set his Park two hundred Foot from the Highway, as before is said, or make such a Wall, Dike, or Hedge, that Offenders may not pass, nor return to do evil.

- Sect. 17. And by 3 & 4 W. & M. 12. The*
S. 27. 28. *Surveyors shall make every Cartway leading to any Market-town, eight Foot wide at the least, and as near as may be even and level: And no Horse Causey or Causeys for Horses travelling in any publick Highway, shall be under three Foot in Breadth.*

- Sect. 18. And by 8 & 9 W. 3. 15. The Ju-*
S. 29. *stices of Peace, or the major Part of them, being five at the least, shall have Power at their Quarter Sessions to widen any Highways in their respective Jurisdictions, so that the Ground to be taken in do not exceed eight Yards in Breadth, and the said Power extend not to pull down any House, or to take away the Ground of any Garden, Orchard, Court, or Yard: And the said Justices may impanel a Jury to assess a Recompence to be given to the Owners of the Land so taken in, not exceeding five and twenty Years Purchase, and also Satisfaction to the Persons, who may be otherwise injured by the Enlarging such Highways: And on Payment of such Recompence, or leaving it with the Clerk of the Peace, for the Use of the Party, his Interest shall be divested, and the Ground shall be esteemed to all Intents and Purposes a publick Highway; and the said Justices may order Assessments on all and every the Inhabitants, and Occupiers of Hereditaments, in the respective Places that ought to repair the High-*
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ways, in Sessions employed by chasing Fences, & tried by that no exceed 6 d. reditamen Estates.

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Sect. 2 Parties ag to the nex Also any Highway &c. may the County) quisation a the Clerk

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Of Difficulties relating to the Highways.

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ways, in such Manner as the said Justices at such Sessions shall appoint; and the Money shall be employed by the Order of the said Justices, in purchasing such Land, and making Ditches, and Fences, &c. And the said Assessment shall be levied by Distress and Sale of Goods, &c. Provided that no such Assessments in any one Year shall exceed 6 d. in the Pound of the yearly Income of Hereditaments, nor 6 d. in the Pound for personal Estates.

S. 30.

Sect. 19. And by the same Statute, The said Justices at their Quarter-Sessions, at the Request of any Person, shall issue out Precepts to the Persons interested in the Grounds, that are to be laid unto the Highway, to appear at the next Quarter-Sessions, or shew Cause, why the said Highways should not be enlarged.

S. 31.

Sect. 20. And by the same Statute, After an Order shall be made for the laying out Ground for the enlarging the Highway, the Owners may within eight Months cut down any Wood, growing upon it, or upon their Neglect it shall be sold, &c. and they shall have the Full of what shall be made of it.

S. 32.

Sect. 21. And by the same Statute, The Parties aggrieved by any such Order, may appeal to the next Justices of Assize for the County, &c. Also any Persons aggrieved by the Inclosure of an Highway, after a Writ of ad quod damnum, &c. may appeal to the next Quarter-Sessions of the County; but if there be no such Appeal, the Inquisition and Return, being entred and recorded by the Clerk of the Peace, shall be binding for ever.

S. 33.

Sect. 22. By 3 & 4 W. & M. 12. On the 26 of December, if not a Sunday, and then on the 27, the Constables, Tythingmen, Churchwardens, and Surveyors of the Highways, and Inhabitants

S. 34.

Surveyors
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pointed.
S. 35.

Of Distances relating to the Highways.

bitants in every Parish, shall assemble, and the major Part shall make a List of a competent Number of Inhabitants, who shall have an Estate in Hereditaments, in their own Right, or their Wives of 10 l. a Year, or a personal Estate of 100 l. or are Occupiers or Tenants of Hereditaments of 30 l. a Year, if any such there be; or if there be no such, then a list of the most sufficient Inhabitants, and shall return such List to two or more Justices, in or near the Division where the Parish lies, at a special Sessions, to be held for that Purpose, on, or within fifteen Days after the 3d of January following, if not a Sunday, &c. And the said Justices are to give ten Days Notice of such special Sessions to the Constables, Tythingmen, Churchwardens, and Surveyors of every Parish; and shall at such Sessions, out of the said Lists, according to the Largeness of the Parish, &c. by their Warrant appoint one, two, or more Surveyors of the Highways of every Parish, or for any Hamlet, &c. within the Division, for the Year ensuing; which Appointment shall within six Days be notified by the Constables, Tythingmen, or Surveyors for the Time being, to the Persons appointed, by serving them with the said Warrants, or leaving the same, or a Copy at their Houses, &c. And from thenceforth the Persons so appointed shall be Surveyors of the Highways for the Parish, &c. for which they shall be so appointed for the Year ensuing, and shall take upon them, and duly execute the said Office, on Pain of 5 l. for their Refusal, or Neglect, to be levied by Distress and Sale of Goods, &c. And in Case of such Neglect or Refusal, the said Justices may appoint some other fit Person, to execute the said Office, who on the like Notice shall be subject to the like Forfeiture, on their Refusal or Neglect, &c. And if the Constables,

Of Diligences relating to the Highways. 241

and other Officers above-mentioned, shall not return such List, every one of them so neglecting shall forfeit 20 s. And if any Justice of Peace shall refuse or neglect to do what is required of him by the said Act, he shall forfeit 5 l. &c. S. 36.

Se^t. 23. By the said Statute of 3 & 4 W. How the & M. 12. All Surveyors shall within fourteen Surveyors Days after their Acceptance of their Office, and so are to execute their Office. from time to time every four Months, take a View of all the Roads, &c. within their Precincts, and make a Presentment on Oath in what Condition they find them, to some neighbouring Justice, on Pain of 5 l. unless they shall have some reasonable Excuse, &c. And what Defaults they shall find, they shall the next Sunday after Sermon give publick Notice of in the Church, and if the same be not amended within thirty Days after such Notice, such Surveyors shall within thirty Days amend the same, and dispose of the Annoyances towards the Repairs of the said Highways, and shall be reimbursed their Charges by the Parties who should have done the same; and if the said Parties shall not on Demand pay the said Charges, the Surveyors shall apply themselves to some Justice of Peace, and on Oath of such Notice, &c. shall be repaid such their Charges as shall be allowed reasonable by such Justice, &c. to be levied as is aforesaid. Vid. infra Se^t. 27. Annoyances presented and removed. S. 37.

Se^t. 24. By 22 C^a. 2. 12. Par. 12. The Six Days Surveyors shall appoint six Days for the providing Materials, &c. for the Amendment of the Highways, &c. at which Days all Persons liable shall attend and work, &c. And the said Surveyors shall return the Defaulters within one Month to some neighbouring Justice, who shall present the same at the Quarter-Sessions, &c. Work appointed. S. 38.

R

Se^t.

Rubbish
and Stones
dugged for,
&c.

S. 39.

ſect. 25. By 5 El. 13. The Surveyors for the better Amendment of the Ways within their ſeveral Limits may take of the Rubbiſh or ſmalleſt broken Stones of any Quarry within the Pariſh without the Controlment of the Owners, ſo much as by them ſhall be deem'd neceſſary: And for Default of ſuch Rubbiſh, every ſuch Surveyor may dig for Gravel, Sand, or Sindors, in the Grounds of any Perſon within the Pariſh adjoining to the Way wherein any ſuch Gravel, &c. are likely to be found, and may gather Stones lying on any Lands within the Pariſh, and meet for the Purpoſe, and carry them away; but they ſhall not cauſe any Rubbiſh, &c. to be dugged out of any Quarry, but ſhall only take what they find ready dugged by the Owner, &c. neither ſhall they dig in any Houſe, Garden, Orchard, or Meadow; neither ſhall they cauſe more than one Pit to be dugged for Gravel in any ſeveral and incloſed Grounds; neither ſhall the Pit dugged be any way in Length or Breadth above ten Yards over; and the Surveyor that ſhall cauſe ſuch Pit to be dugged, ſhall within one Month after cauſe it to be filled or ſtopped up at the Charge of the Pariſhioners, on Pain of five Marks to the Owner of the Soil, &c.

Water-
courſe
turn'd.

S. 41.

Sluices
made.

S. 42.

S. 43.

ſect. 26. And by the ſame Statute, Surveyors may turn a Water-courſe, or Spring of Water, in any Highway into any Ditch adjoining, &c. And by 18 El. 10. Par. 7. Where any Soil hath been caſt into the Way, that there is a Bank between the Way and the Ditch, the Surveyors may make Sluices, &c. to convey the Water out of the Way into the Ditch. And by 3 & 4 W. & M. 12. and 1 Geo. 52. Where the Ditches and Drains already made are not ſufficient to carry off the Water from the Highways, the Surveyors may make new Ditches and Drains

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Of Nuisances relating to the Highways. 243

in the Lands next adjoining, and keep them scoured, cleansed, and open, &c.

Sett. 27. By 5 El. 13. 8. Every Surveyor shall within one Month after any Offence contrary to the Statute; or 2 & 3 Ph. & Ma. 8. present the same to the next Justice of Peace, under Pain of 40 s. And by 22 Ca. 2. 12. All Constables and Surveyors shall cause the several Statutes then Penalties in force touching the Repairs of the Highways to be put in Execution, on Pain of 40 s. for every Neglect, or for wilfully suffering any Waggon or Carts to pass thro' their Limits with more Cattle, or in other manner than by Law is allowed. S. 45.

Sett. 28. And by 3 & 4 W. & M. 12. A special Sessions shall be holden once in four Months, whereunto all the Surveyors in the Division shall be summoned, and the Justices shall there give them a Charge concerning their Duty; after which the Surveyors shall make a Presentment on Oath of the Condition of their several Highways, and of what Offences or Neglects any Persons are guilty of; and every Surveyor, before he goes out of his Office, shall at a special Sessions give an Account on Oath of all Monies come to his Hands, which ought to be employed on the Highways, and he shall deliver the Surplus to his Successor, &c. S. 46.

Sett. 29. And by 6 Annæ 29. Surveyors for every Neglect of their Duty in putting the Laws relating to the Highways in Execution, forfeit 1. to be levied by Distress, &c. by Warrant from any one Justice of Peace. S. 47.

Sett. 30. It is a Nuisance to dig a Ditch, or make a Hedge overthwart the Highway, or to erect a new Gate, or to lay Logs of Timber in it, or generally, to do any other Act which will render it less commodious. *What a Nuisance to the Highway.*

244 Of Nufances relating to the Highways.

S. 61. Also it is a Nufance for an Heir to fuffer an Incroachment or other Nufance to the Highway, begun by the Anceftor, to continue. And it is no Excufe for him who
S. 48, 49, 50. lays Logs in the Highway, that he laid them only here and there, fo that the People might have a Paffage thro' them by Windings and Turnings. But it is no Nufance for an Inhabitant of a Town to unlade Billets, &c. in the Street before his Houfe, by reafon of the Neceffity of the Cafe, unlefs he fuffer them to continue there an unreafonable Time.

S. 50, 52. Sect. 31. It is a Nufance to fuffer the Highway to be incommoded by reafon of the Foulnefs, &c. of the adjoining Ditches, or by Boughs of Trees hanging over it, &c. And it is faid that the Owner of Land next adjoining to the Highway ought of common Right to fcour his Ditches, but that the Owner of Land next adjoining to fuch Land is not bound by the Common Law fo to do without a fpecial Prefcription. Also it is faid that the Owner of Trees hanging over an Highway to the Annoyance of Travellers is bound by the Common Law to lop them, and it is clear that any other
S. 61. Perfon may lop them, fo far as to avoid the Nufance: For it feems a general Rule that any one may lawfully abate any common Nufance, fo that he remove not the Materials.

Ditches Scoured. Sect. 32. By 5 Eliz. 13. The Hays, Fences, Dikes, or Hedges, next adjoining to any high or
S. 53. common faring Way, fhall from time to time be diked, fcoured, repaired, and kept low, by the Owners of the Ground, inclofed with fuch Hays,
S. 54. &c. And by 18 Eliz. 10. Whoever fhall not re-

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Of Nuisances relating to the Highways. 245

pair Ditch, or scour any Hays, &c. according to the Intent of the said Statute of 5 Eliz. shall forfeit 10 s. &c. And by 3 & 4 W. & M. 12.

If the Owner or Occupier of Land next to a Highway not twenty Foot broad, shall neglect to cleanse, every Year &c. the Ditches, &c. or to cause the Earth taken out thereof to be carried away, or to lay sufficient Trunks, &c. where any Cartways are, into the said Grounds, within ten Days after Notice by a Surveyor, he forfeits 5 s. &c. And by 1 Geo. 52. S. 55.

If Persons, who ought to scour and keep open their Ditches and Water-courses near the Highways, shall neglect so to do it within 30 Days after Notice from the Surveyors, they forfeit 2 s. 6 d. and the Surveyors are authorised to scour such Ditches, and to make new ones, &c.

Se^t. 33. And by the said Statute of 3 & 4 W. & M. 12. The Possessors of Land adjoining to a Highway not twenty Foot broad shall from time to time, where the Way is not twenty Foot broad, keep their Hedges plash'd, cut, or pruned, so as no Tree, Bush, or Shrub, shall stand or grow in it, nor Bough or Branch hang over it: But the said Hedges shall be kept, cut and pared right up from the Roots, and not permitted in any sort to spread into or hang over the Highway, &c. S. 56.

Se^t. 34. And by 18 Eliz. 10. The Occupiers of Lands adjoining to Grounds adjoining to a Highway, or common faring Way, where any Ditching or Scouring should be as aforesaid, shall, as Need shall require, ditch and scour such their Lands, whereby the Water conveyed over them from the Highways, &c. may have Passage over them, &c. on Pain of Forfeiture for every Rod not so ditched and scoured, &c. 1 s. S. 57.

246 Of Nuſances relating to the Highways.

Trees and
Buſhes re-
moved.

S. 58.

S. 59.

S. 60.

Soil, &c.
not to lie
in a High-
way.

S. 62.

S. 63.

Sect. 35. By the Statute of Wincheſter, Ch. 5. No ſmall Tree or Buſh, whereby a Man may hurt to do hurt, ought to ſtand within 200 Foot of a Highway leading from one Market-Town to another. And by 5 Eliz. 13. All Trees and Buſhes in Highways ſhall be cut down by the Owners of the Soil, &c. And by 18 Eliz. 10. Whoever ſhall not cut down, or keep low, all Trees and Buſhes, growing in or next adjoining to ſuch Ways, according to the Intent of the ſaid Statute of 5 Eliz. ſhall forfeit 10 s. And by 3 & 4 W. & M. 12. No Tree, Buſh, or Shrub, ſhall ſtand or grow in any Highway not twenty Foot broad, but ſhall be cut down, grubbed up, and carried away by the Owner of the Land within ten Days after Notice from a Surveyor, on Pain of 5 s.

Sect. 36. By 18 Eliz. 10 No one, having Ground adjoining to any Highway, or common faring way, leading to a Market-Town, ſhall caſt or ſcour any Ditch, and ſuffer the Soil thereof to lie ſix Months in ſuch Way to the Annoyance thereof, on Pain of 1 s. for every Load; and the Surveyors may make Sluices thro' Banks occaſioned by ſuch Soil, &c. And by 1 Geo. 52. Thoſe who leave ſuch Earth eight Days in the Highways forfeit any Sum under 5 l. and not under 20 s. &c. And by 3 & 4 W. & M. 12. No one ſhall lay in any Highway, not twenty Foot broad, any Stone, Timber, Straw, and Dung, or other Matter, whereby the ſame ſhall be any way annoy'd, on Pain of 5 s. And if any Timber, Stone, Hay, Straw, Stubble, &c. ſhall be laid in any ſuch Highway, whereby the ſame ſhall be any ways annoy'd, the Owners or Poſſeſſors of the Lands next adjoining ſhall clear the Way by removing the ſaid Timber, &c. and ſhall have the ſame to their own

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Of Nuisances relating to the Highways. 247

own Use; and if such Owner shall neglect to clear the Way of the said Nuisances he forfeits 5 s.

Sect. 37. By 7 & 8 W. 2. 29. Whoever shall pull up, cut down, or remove, any Post, Block, of Horse great Stone, or Bank, or any other Thing set up for securing a Horse or Foot-Causey, in any publick Highway, from Waggon, &c. shall, on Complaint to a Justice of Peace, forfeit 20 s. &c. Securities or Foot-Causeys not to be removed. S. 64.

Sect. 38. By 5 Geo. 12. No Waggon travelling for Hire (other than such as shall be employed about Husbandry, and in carrying of Cheese, Butter, Hay, Straw, Corn unthrashed, Coals, Chalk, or any one Tree or Piece of Timber, or any one Stone or Block of Marble, or such Timber, Ammunition or Artillery, as shall be for the King's Service, and Caravans, and the covered Carriages of Noblemen and Gentlemen for their private Use.) shall be drawn with more than six Horses, and no such Cart with more than three, on Pain of forfeiting all the Horses above six in a Waggon and three in a Cart, with all the Accoutrements, to the sole Use of him who shall seize or distrain them; and the Person making such Seizure, &c. shall deliver the Thing seized to a Parish Officer of the same or of an adjacent Town (who is required to keep the same) till the Party seizing shall prove the Offence on Oath before some Justice, who shall issue his Precept to the Officer, to deliver the Thing forfeited to the Party who seized, &c. Travelling Waggon not to be drawn with more than six Beasts.

Sect. 39. And by the same Act, No Waggon travelling for Hire, having the Wheels bound with Streaks or Tire of a less Breadth than two Inches and a half when worn, or set on with rose-headed Nails, shall be drawn with more than three Horses, on Pain of forfeiting all above three, &c. Breadth of Waggon Wheels.

248 Of Nuisances relating to the Highways.

Seet. 40. And whosoever shall binder, or attempt to binder, the Seising, &c. for any Forfeiture in this Act, or shall rescue the same, or use any Violence to the Persons concerned in such Seisure, shall, on Oath of one Witness before a Justice, be sent to the common Goal for three Months without Bail, and forfeit 10 l. &c.

S. 66. Seet. 41. By 9 Annae 18. If any Person employed by a Carrier, or other Person subject to the Penalties in that Act, shall drive or assist in driving any travelling Waggon, &c. with more than six Horses, &c. he shall forfeit 5 l. &c.

Nuisances to the Highways where indictable, &c. Seet. 42. By 2 & 3 P. & M. 8. Stewards of Leets shall inquire of all Offences against that Statute, and assess such Fines and Amercements for the same, as they shall think meet: And in Default of such Inquiry, the Quarter-Sessions may

S. 67. inquire thereof, &c. And the Stewards of Leets shall make Estreats indented of all the Fines, &c. for the Defaults presented before them, and shall deliver one Part thereof sealed and signed by them to the Bailiff and High-Constable of the Hundred, &c. wherein the Default shall be presented, and the other to the Constable and Church-wardens of the Parish yearly within six Weeks after Michaelmas: And the Clerk of the Peace shall make the like Estreats of the Fines, &c. for the Defaults presented before the Justices of Peace, the which Estreats shall be a sufficient Warrant to the said Bailiff or chief Constable to levy the said Fines, &c.

S. 68. by way of Distress, &c. And every of the said Bailiffs and High Constables shall once every Year make a true Account to such Constable, &c. of all such Sums of Money, which shall be by them collected on such Estreats, &c. And all such Fines, &c. shall be to the Church-Wardens to be bestowed on the Highways, and the said Church-wardens shall

S. 69.

shall have Authority to call the said High-Bailiff and Head-Constable to account before the Justices of Peace, &c. and the said Bailiffs and High-Constables shall be allowed 8 d. in the Pound for their own Pains, and 1 s. for the Fees of the Clerk of the Peace, or Steward of the Leet.

Present-

Se^t. 43. By 5 Eliz. 13. Every Surveyor shall within one Month after any Offence against 2 & 3 P. & M. 8. or the said Statute of 5 Eliz. present the same to the next Justice of Peace, on Pain of 40 s. for every Offence not presented: And every such Justice shall certify the same Presentment at the next general County Sessions, on Pain of 5 s. for every such Presentment not certified: And the Quarter-Sessions may inquire of and assess Fines for the said Offences, &c.

ments by Surveyors.

S. 70.

Se^t. 44. And by the said Statute of 5 Eliz. Every Justice of Peace, in the general Sessions, may present any Highway not well repaired, or any other Offence contrary to either of the said Statutes, and every such Presentment shall be of the same Force and Effect, as if the same had been presented, found and adjudged, by the Oath of twelve Men: And for every such Default so presented the said general Sessions shall assess such Fine as they shall think meet: Saving to every Person who shall be touched by such Presentment his lawful Traverse thereto, as he might have upon any Indictment of Trespass, or forcible Entry.

S. 71.

By Justices of Peace.

S. 72.

Se^t. 45. It is holden, that the Person so presented cannot traverse the Highways wanting Repairs, but can only plead, that some other Person is bound to it, or that himself is not. But it seems difficult to reconcile this Opinion with the Words of the Statute, which saves to the Party his Traverse to such Presentment, as he might

250 Of Nuisances relating to the Highways.

might have to an Indictment of Trespass or forcible Entry.

S. 73. Sect. 46. It is farther enacted by the said Statute of 5 Eliz. That all such Fines shall be estreated, levied, and imployed in such Manner as is appointed by * 2 & 3 Ph. & M. and that Justices of Assize, Oyer, or Peace, and Stewards of Leets, shall determine the Offences against the said Statute.

* Vid.
supra
S. 42.

Penalties
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ed.

S. 75. Sect. 47. By 22 Car. 2. 12. If any Person shall fail in his Days Labour towards the High-Ways, or not send his Carriages, &c. the Surveyors are to complain to the next Justices, who on the Oath of one Witness, shall levy by Distress and Sale of Goods, &c. for every Labourer failing 1 s. and 6 d. and for every Man and Horse 3 s. and for every Cart with two Men 10 s. for every Day wherein they make Default; which Penalties shall be imployed on the High-Ways. And by this Statute, and 3 & 4 W. & M. 12. Assessments to the High-Ways shall be levied by Distress and Sale of Goods, &c.

S. 76.
Assessment
how levi-
ed.

S. 77. Sect. 48. By 22 Car. 2. 12. All Defects of Repairs of Bridges, or High-Ways, &c. shall be presented in the County only where they lie, and no such Presentment shall be removed by Certiorari, &c. out of such County, 'till it be Travers'd, and Judgment given. And by 3 and 4 W. & M. 12. All Matters concerning Bridges and Highways, shall be determined in the County only where they lie; and no Presentment, Indictment, or Order, made by Virtue of that Act shall be removed by Certiorari out of such County.

S. 79.

No Cer-
tiorari.

Sect. 49. But if a Quarter-Sessions under colour of these Statutes manifestly exceed their Authority, and by making an Order on Surveyors to account before a special

Of Offences relating to the Highways. 251

Sessions, their Proceedings may be removed into the *King's Bench*, and quash'd; and so *Vide B. 2.* may they by 5 & 6 *W. & M.* if the Right *c. 27.* come into Question. *S. 35.*

Sect. 50. By 3 & 4 *W. & M.* 12. No one shall be punished for any Offence against the said Act, unless he be prosecuted within six Months, and no one, who shall be punished by virtue of that Act, shall be punished for the same Offence by virtue of any other Act or Law whatsoever.

Sect. 51. By 3 & 4 *W. & M.* 10. Persons aggrieved with any Assessment, &c. by the said Quarter-Justices may appeal to the Quarter-Sessions. *Sessions.*

Sect. 52. It seems clear that no one ought to be punished for any Offence against the Highways without being first called upon to answer for himself, except in the Case of a Presentment in a Court Leet, and, as some * say, in the Case of a Presentment by a Justice of Peace on his View. And even in the Case of a Presentment in a Court-Leet if it touch a Man's Freehold, as by charging with being bound to Repairs in respect of the Tenure of his Land, it may so far be traversed in the *King's Bench*, being removed thither by *Certiorari*: Also it may be traversed where a Defendant in Trespass justifies under it. *Presentments, &c. whether traversable. * Vide Supra, 45.*

Sect. 53. Upon a Certificate and Affidavit that the Highway is in good Repair, you may take Exceptions to the Form of the Indictment, but not easily without such Certificate and Affidavit. And there are several Exceptions of this kind, as, *Raym. 182. 2 Keb. 514, 9. The Form of the Indictment.*

Sect. 54. 1. That the Indictment doth not certainly shew a *Locus a quo* and a *Locus ad quem*, *S. 86.*

252 Of Nufances relating to the Highways.

quem, but there is no Need to shew that a Highway leads to a Marker-Town.

S. 87. *Sett.* 55. 2. That it is repugnant to it self in shewing where the Nufance was done, as where it sets forth that a Man stopped a Way at D. leading from D. to E.

S. 88. *Sett.* 56. 3. That it doth not certainly shew to what Part of the Highway the Nufance extended, as where it only says, that a certain Part of the King's Highway at K. was stopp'd, without shewing how much, or where it says the Place nufanced contained so many Foot in Length, and so many in Breadth, by Estimation.

S. 89. *Sett.* 57. 4. That it doth not shew with sufficient Certainty that the Place nufanced was a Way common to all the King's People, as where it only calls it a Horseway; or having called it a common Footway to the Church of D. adds for all the Inhabitants of D.

S. 90. S. 58. 5. That an Indictment for not repairing a Highway, which the Defendant ought to repair *Ratione Tenuræ*, doth omit the Word *sua*: But this Exception hath been of late over-ruled.

S. 90. S. 59. 6. That an Indictment against J. S. Bishop of A. for not repairing a Highway, &c. doth not shew in what Capacity he ought to do it.

S. 91. S. 60. 7. That the Nufance is not expressed in proper Terms, as where the Indictment is that the Defendant diverted the Highway which cannot be.

Sett. 61. That an Indictment against several Persons for not repairing is laid jointly and

and several: But it is no Exception that a Presentment of such a Highway's being out of Repair by the Default of the Inhabitants, &c. doth not name any Person in certain: Or that a Presentment against a Man for stopping a Highway in his own Land, * 1 Ven. which is well proved by Evidence of Plough-4. ing it, doth not lay the Offence *vi & B. 2. c. 25. armis.* S. 92.

S. 62. The Defendant shall not be dis Sal. 358. charged by submitting to a Fine, but a 6 Mod. *Distringas* shall go *in infinitum* 'till he repair 163. the Way.

C H A P. LXXVII.

Of Bridges.

Sect. 1. **T**Hose who are bound to repair Bridges a publick Bridge, must make *how re-* it of such Height and Strength as shall an- *paired at* swer the Course of the Water, whether it *Law.* continue in the one Channel, or make a S. 1. new one; and they may for that Purpose enter on any adjoining Land, and lay upon it the Materials requisite, &c.

Sect. 2. Of common Right the Charge of *By whom.* repairing common Bridges, whether old or S. 1. new, if of common Conveniency, lies on the County where they are, unless Part of them be in a Franchise, in which Case it is said, that so much shall be repaired by the Franchise. But the Charge of such Repairs

- S. 2. Repairs may be cast on a Corporation aggregate, by a special Prescription; and either on such a Corporation, or any other Person, by a special Tenure: But not barely in respect of having erected it.

Contribution.

- S. 3. Sect. 3. Any one or more of the Persons bound to such Repairs, may be made Defendants in the Indictment, and shall be liable to the whole Fine, and put to their Remedy for a Contribution. Neither can the Defendants in any such Indictment plead, that they are bound to Repairs, without shewing who are. And if they plead *A. B.* is bound to the Repairs, and traverse the Charge against themselves; the Attorney General may traverse the Charge alledged against *A. B.* though thereby he take a Traverse on a Traverse, and may also surmise that the Defendants are bound to the Repairs, and the whole shall be tried.

- S. 6. Sect. 4. It is said, that any Inhabitant of a County indicted for not Repairing a Bridge, may be a Witness, though not a Juror.

Bridges repaired by Statute.

S. 7.

Sect. 5. By 22 H. 8. 5. The Justices of Peace in every Shire, Franchise or Borough, or four of them, whereof one of the Quorum, may inquire and determine in their general Sessions, of Annoyances of Bridges broken in the Highways, and make such Process, and Pains on every Presentment, against the Persons charged, &c. as the King's Bench is used to do, or as it shall seem by their Discretions to be necessary and convenient.

Sect. 6. And where it cannot be known who ought to make such Bridges decayed, they shall

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shall be made by the Inhabitants of the Shire, City or Town Corporate, wherein they shall be: And if Part shall be in one Shire, &c. and Part in another, the Inhabitants of each shall Repair, and make such Part as lies within their respective Limits.

S. 8.

SECT. 7. And for speedy Reformation of such Bridges, the Justices of Peace of such Shire or Town, or four of them, whereof one of the Quorum, may call before them either the Constables, or else two of the most honest Inhabitants of every Town and Parish, and with the Assent of the said Constables, or inhabitants, may Tax every Inhabitant within their Limits, in such Sum as shall be thought convenient, (viz. shall make a distinct Tax on each Householder living in the County, and each Occupier of Land lying in the County, whether he dwell in it or not, and whether such Householder, or Occupier, be a Body Politick or Natural, and though he claim an Exemption by a Prior Act of Parliament,) and shall cause the Names and Sums of each Person to be written in a Roll indented; and shall have Power to make two Collectors of every Hundred, for the Collection of such Tax, which Collectors receiving one Part of the Roll indented, under the Seals of the Justices, shall have Power to collect all the Sums therein contained, and to distrain those who shall refuse to pay, &c. And the same Justices, or four of them, may also Name two Surveyors, who shall see every such decayed Bridge repaired from time to time, to whom the said Collectors shall pay the said Sums by them received: And the Collectors and Surveyors, and their Executors, &c. shall from time

S. 16, 17, 18.

to time make a true Account to the Justices, or to four of them, whereof one of the Quorum, of their Receipts, Payments and Expences: And if any of them shall refuse that to do, the same Justices, or four of them, may make Process against them by Attachments under their Seals, returnable at the General Sessions; and, if they appear, may compel them to Account; or else, on their Refusal, may commit them quousque. And the said Justices may allow them such reasonable Charges as by their Discretion shall be thought convenient.

S. 12.
The 8th
Parag. of
the Sta-
tute.

SECT. 8. But this Method of Taxing, and raising the Money taxed, seems altered by 1 Anne 18. for which I shall refer to the Statute at Large.

S. 10. SECT. 9. And it is further enacted by the said Statute of 22 H. 8. that where the Bridge is in one Shire, and the Person bound to amend it in another, or where the Bridge is in a Town Corporate, and the Person bound to repair it is out of it, the Justices of such Shire or Town Corporate, may inquire and determine all such Annoyances within their Limits; and on a Presentment may make Process against such Persons, and do further in every behalf, in every such Case, as they might do by the said Act in Case that such Persons were in the same Shire, &c. And all Sheriffs, and Bailiffs of Liberties, shall serve such Process, on Pain to make such Fine as shall be set by the said Justices.

S. 11. SECT. 10. But it is Provided, that nothing in this Act shall be prejudicial to the Liberties of the five Ports, but that the Warden, Mayors, Bailiffs and Jurats of the same Ports, may inquire and determine all Annoyances of Bridges therein, and make such Process, &c. as the Justices

Justices of Peace may do in other Places, by Virtue of the said Act.

Sett. 11. And it is farther enacted, that such Parts of Highways as lie next adjoining to the Ends of Bridges, by the Space of three Hundred Foot, shall be amended as oft as need shall require; and that the Justices, or four of them, whereof one of the Quorum, within their several Limits, may inquire and determine in their General Sessions all Annoyances therein, and do in every Thing concerning the same in as ample a Manner as they may do for the making and repairing of Bridges, &c.

Sett. 12. It is agreed that this Statute extends only to Bridges in the Highways, but Justices of Peace are said to have Jurisdiction over Nuisances to other Common Bridges, by Virtue of 1 Eliz. 3. the General Words of the Statutes of Ed. 3. 10. S. 14.
Sal. 259;
6 Mod.
255, 256;
See B. 2.
c. 8.

Sett. 13. If the Justices of a County or Town be not four in Number, and one of them of the Quorum, they have no Power within the Statute: But it is said, that the Justices of the County in which such Town, being not a County, shall lie, may by Virtue of the first Clause determine all Annoyances to Bridges within it, if it be known who ought to repair: But if it be not known, such Annoyances seem to be left to the Common Law. S. 15.
2 Inst.
701, 702;
&c.

Sett. 14. *Quære*, If a Borough that hath no Bridge of its own, shall contribute to the Repairs of a County Bridge. S. 19.

C H A P. LXXVIII.

Of Nuisances relating to Publick Houses.

Señ. 1. **A**N Inn is Indictable as a Nuisance, if it usually harbour

S. 1. Thieves, or Persons of a scandalous Reputation, or have frequent Disorders in it, or be erected in a Place where there is no need of one, to the Hindrance of other ancient and well govern'd Inns, &c.

S. 2. *Señ. 2.* Also a Common Inn-Keeper, whether he have a Sign before his Door or not, is indictable if he take exorbitant Prices, or refuse to receive and entertain a Traveller; and it is said, that the Constable of the Town may compel him to do it on such Refusal.

S. 3. *Señ. 3.* It hath been always agreed, that he who has an Inn by Prescription, may lawfully enlarge it on the same Land;

S. 4. Also it is settled at this Day, that any Person may of his own Authority, set up a new Inn in a proper Place, as he might an Ale House at the Common Law.

Magistrates not to be Victuallers. *Señ. 4.* By 12 E. 2. 6. No Officer in City or Borough, who ought to keep the Assises of Wine and Victuals, so long as he attends thereon, shall merchandize for Wines or Victuals, on Pain of forfeiting the Merchandize, &c. And by

by 6 R. 29. No Victualler shall have any judicial Office in a Town, but only where there is no other Person Sufficient. In which Case yet the same Judge, during his Office, shall abstain from the Exercise of Victualling, on Pain of forfeiting the Victuals sold. And by 3 H. 8. 8. As often as any Victualler shall be chosen to an Office in any City, &c. which during his Office, should have the Assessing of Victuals, two Persons of the same City, &c. not being Victuallers, shall be chosen in the like Form as the said Officer, which two Persons, with the said Officer, shall be Sworn to set the Prices of Victuals during the Time of such Victuallers being in the Office; and then it shall be lawful for such Victualler, after the Prices shall be set by himself, and one at least of the same Persons, to sell Victuals, &c. the said Statute of 12 E. 2. notwithstanding.

Sect. 5. By 21 Jac. 1. 21. Inn-holders shall Victuals to sell Provender and Victual for Man and Beast at be sold at Reasonable Rates, without taking any Thing for Reason-
Litter. And if they dwell in a thoroughfare S. 8.
Town, which is no City, Town Corporate, nor Market Town, wherein any common Baker, having been an Apprentice seven Years, is dwelling, may make in their own Houses Horse Bread Horse of due Assise, &c. And if such Horse Bread be Bread, by not of due Assise, &c. or if any Inn-holder shall whom Offend in any Thing against this Act, the Just-
ices of Assise, Oyer or Peace, may inquire and made.
determine the same, &c.

Sect. 6. By 5 & 6 E. 6. 25. Justices of S. 9.
Peace, or two of them, whereof one of the Alehouse
Quorum, within every Shire, City, Franchise, suppressed.
&c. may discharge common Selling of Ale and S. 10.
Beer, in common Ale-Houses. And it is said,
S 2 that

that an Alehouse-Keeper so suppressed, cannot be licensed again but in open Sessions.

- Licensed.* Sect. 7. And by the same Statute, None shall keep any Common Alehouse, except in Fairs, but such as shall be allowed in Sessions, or by two Justices, whereof one of the Quorum: (And no Appeal lies for the Refusal of such Allowance.) And the said Justices shall take Recognizance of the Persons so allowed, against the using of unlawful Games, and for the
- S. 11. Maintenance of good Order, &c. for the making of which the Parties bound shall pay but 12d. And the said Justices shall certify every such Recognizance to the next Quarter-Sessions, on Pain
- S. 12. of 3 l. 6 s 8 l. for each Recognizance not certified.

- Sect. 8. And every Quarter-Sessions may by Presentment, Information, or otherwise at Discretion; inquire of all such Persons if they have done any Act to forfeit their Recognizance, and shall award Process against every Person so presented or complained of, to shew Cause why he should not forfeit his Recognizance; and may also determine the same by such Means as by their Discretion shall be thought good.
- S. 13.

- Sect. 9. And if any Person, not allowed, shall obstinately take upon him to keep a common Alehouse; or shall, contrary to the Command of the said Justices, or two of them, use commonly Selling Ale and Beer, except in Fairs, the said Justices, or two of them, whereof one of the Quorum, shall commit such Offender to the Common Gaol for three Days, and before his Deliverance shall take his Recognizance with two Sureties, that he shall not keep any common Alehouse, &c. And the said Justices shall certify every
- S. 14.

every such Recognizance and Offence at the next Quarter-Sessions, which Certificate shall be a sufficient Conviction of the Offence, and the Sessions shall thereon assess a Fine for each Offence, at 20 s.

S. 15.

SECT. 10. By 3 C. 1. 3. If any unlicensed Person shall keep a common Alehouse, or use commonly Selling of Ale, Beer, Cyder or Perry, except in Fairs, he forfeits 20 s. for each Offence to the Poor of the Parish where the Offence is committed, the same being viewed by a Justice of Peace, or Mayor, &c. or proved by two Witnesses, or confessed; the said Penalty to be levied by the Constables and Church-Wardens of the Place, by Distress, to be taken and detained by Warrant from the said Justice, or Mayor, &c. And for Default of Satisfaction within three Days, the said Distress to be by the said Constables, &c. appraised and sold, and the Overplus delivered to the Offender: And if such Offender shall not have sufficient Goods, or shall not pay the said 20 s. within six Days after Conviction, the said Justice, or Mayor, &c. shall commit such Offender to some Constable, or other inferior Officer of the Place, to be openly whipped. And if such Constable shall neglect to execute the said Warrant, or the said Punishment, he may be committed by the said Justice, &c. 'till the Offender shall be whipped, or 'till the Person so neglecting shall have paid 40 s. to the Use of the Poor, &c. And such unlicensed Alehouse-Keeper shall for the second Offence be committed to the House of Correction for a Month; and for the third Offence, he shall be committed to the House of Correction 'till he shall be delivered by the General Sessions. Provided, that the Offender punished by Virtue of this Act, shall not be punished

S 3

again

again for the same Offence by Virtue of 5 & 6 E. 6. & sic è converso.

Punish-
ment for
suffering
Tippling.

§. 17.

SECT. II. By 1, 9, 1, 9, 4, 9, 1, 15, 21, J. 1. 7. & 1. C. 1. 4. If any Inn-Keeper, Victualler, or Alehouse-Keeper, or any Keeper of a Tavern, or one who sells Wine, and also keeps an Inn, or Victualling in his House, suffer any Person to continue Drinking or Tippling in any Inn, &c. other than such as shall be invited by any Traveller, and shall accompany him during his necessary Abode there; and other than Labourers, and Handicrafts Men in Towns Corporate, and Market Towns, on the usual working Days, for one Hour at Dinner; and other than Labourers and Workmen, who for the following of their Work in any Town or Village, shall sojourn, or victual, in any Inn, &c. or other than for urgent and necessary Occasions, to be allowed by two Justices of Peace, every such Inn-Keeper, &c. shall forfeit 10 s. to the Use of the Poor of the Place, &c. the Offence being viewed by a Justice, &c. or found by Verdict, or Indictment, &c. or proved by one Witness, or confessed, &c.

§. 18.

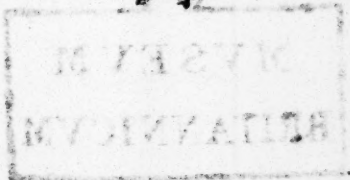
And by 1 Jac. 1. 9. The said 10 s. shall be levied by the Constables, or Church-Wardens of the Place, by Distress; and for Default of Satisfaction within six Days, the same to be appraised and sold, &c. and for want of Distress the Offender to be committed 'till he pay. And if the said, Constables, &c. neglect to levy the said Penalties, or to certify the Default of Distress, &c. they forfeit 40 s. &c. But it is provided by the said Statute of 1 Jac. 1. 9. That the Punishment of Offenders against the same, within either University, shall be done, according to the Intent of the said Law, by the Governors, &c. of such University, to whom, in other Ca-

See

ses the Administration of Justice, and Correction of Offenders by the Laws of the Realm, and their several Charters do belong, &c. and that all Forfeitures by virtue of the said Act, within either University, shall be levied by the Officers of such University, to be appointed by the Vice-Chancellor; and that all Powers given by the said Act, shall, by the Governors, &c. of the Universities, be duly executed, &c.

Sect. 12. By 4 Jac. 1. 5. and 21 Jac. 1. Punishment of Drunkenness. S. 20.
7. Whoever shall be drunk, and within six Months be convicted thereof either on Indictment, &c. or before a Justice of Peace in any County, or any Justice of Peace, or other head Officer in any Town Corporate, on View or Confession, or Oath of one Witness, shall forfeit 5 s. to be paid in a Week after Conviction, to the Church-Wardens of the Parish, &c. And if such Person shall not pay the same, it shall be levied by Warrant from the Court, &c. before which the Conviction shall be: And if the Offender be not able to pay it, he shall be committed to the Stocks, for each Offence six Hours. And if he be convicted a second Time, he shall be bound to the Behaviour, with two Sureties, in a Recognisance of ten Pounds. And if any Officer do neglect the due Correction of the said Offender, or the due Levying of the said Penalties, he forfeits 10 s. &c.

Sect. 13. By 4 Jac. 1. 5. 21 Jac. 1. 7. & Punishment of Tippling. S. 11.
1 C. 1. 4. If any one shall remain drinking, or Tippling in any Inn, Victualling house, Alehouse, or Tavern, &c. and the same be viewed by any Justice of Peace, Mayor, &c. or confessed by the Offender, or proved by one Witness, in the Manner above prescribed for suffering Tippling, pra. S. 4, unless S. 11,



unless it be in the Cases above excepted concerning suffering Tippling, &c. every such Offender, being Convicted within six Months, forfeits 3 s. and 4 d. to the Use of the Poor of the Place, &c. to be levied by Distress, &c. And if such Offender be not able to pay, any Justice, or Mayor, &c. may set him in the Stocks for four Hours.

S. 22.

And by 4 Ja. 1, 5, Par. 7. Constables, Church-Wardens, Headboroughs, Tithingmen, Ale-conners and Sidemen, shall in their several Oaths be charged to prevent the Offences contrary to the said Statute.

S. 23, 24.

And by Parag. 8, 9, & 10. the Ecclesiastical Jurisdiction and University Privileges are saved; and it is expressly provided, that a Man punished by any the Means aforesaid, shall not be, *estfoons*, punished for the same Offence by any other Means.

Three

Years Dis-

ability.

Sect. 14. By 7 Jac. 1. 10. An Alehouse-keeper, lawfully convicted on any Branch of 1, or 4 Jac. 1. shall for three Years after be utterly disabled to keep any such Alehouse.

C H A P. LXXIX.

Of Monopolies.

Sect. 1.

A Monopoly is an Allowance from the King to any Person, of the sole Buying, Selling, Making, Working, or Using of any Thing, whereby any other is sought to be restrained from any

S. 1.



any Freedom he had before, or hindred from his Lawful. And all Grants of this kind, relating to any known Trade, as the
a Importation of such a Merchandize, the *a* S. 3.
b Ingrossing of Wills and Inventories, &c. or *b* S. 4.
the *c* sole Making, Importing and Selling of *c* S. 5.
playing Cards, are void by the Common Law, as discouraging honest Industry, putting it in the Power of private Persons to set their own Prices. And it is said, *d* that *d* S. 7.
those who procure, or make use of any such unlawful Monopoly, are liable to a Fine and Imprisonment for the Offence, as being *malum in se*, and contrary to the ancient and fundamental Laws of the Kingdom.

Sect. 2. But clearly the King may, for a reasonable Time, grant to a Man the sole Use of an Art first invented, or brought into the Realm by him. Also, according to the common Opinion, he may grant to particular Persons the sole Use of some Employments, an unrestrained Liberty whereof might be of dangerous Consequence, as of Printing the Holy Scriptures, and Law Books, &c. *S. 6.*

Sect. 3. By 21 Jac. 1. 3. All Commissions, *S. 8.*
Grants, Licenses, Charters and Letters Patents, for the sole Buying and Selling, Working, or Using of any Thing, or of any other Monopolies, and all Proclamations, &c. and all other Matter whatsoever any way to the Instituting, Strengthening, or Countenancing the same, are declared to be contrary to Law, and so utterly void, &c. And all Persons whatsoever are disabled to have, use, or put in use any Monopoly, or any such Commission, &c. or other Thing
S. 9.
tending

tending as aforesaid, or any Liberty, Power or Faculty, grounded, or pretended to be grounded thereon. And all such Commissions, Grants and Licenses, &c. and all other Things tending as aforesaid, and the Force of them, shall be examined, heard, tried and determined, by the Common Law, and not otherwise, viz. according to my Lord Coke, in the Courts of Common Law only, and not at the Council Table, or in the Court of Chancery, &c.

S. 10.

S. 11.

Sect. 4. And by the same Statute, If any Person shall be hindered, grieved, disturbed or disquieted, &c. by Occasion or Pretence of any Monopoly, or of any such Commission, Grant or License, &c. he shall have his Remedy at Common Law, by Action on the said Statute, to be heard and determined in the King's Bench, Com-

S. 13. mon Pleas, or Exchequer, against the Party by whom he shall be so hindered or grieved, &c. wherein every such Person so grieved, shall recover three Times so much as the Damages sustained, and double Costs; and no Essoin, Protection, Wager of Law, Aid Prayer, Privilege, Injunction, or Order of Restraint, shall be allowed; (viz. according to my Lord Coke, No Injunction of this Kind from the Privy Council, Chancery, or Exchequer Chamber; nor even Warrant from the King himself.)

S. 13.
3 Inst.
183.

And if any Person shall, after Notice that an Action is grounded on the said Statute, procure the same to be delayed before Judgment, by colour or means of any Order, Warrant, Power or Authority, (viz. of any of the Courts above-mentioned; or even of the King) save only of the Court wherein such Action shall be depending; or after Judgment shall procure the Execution to be delayed by colour or means of

S. 13.
3 Inst.
183.

of any Order, Warrant, Power or Authority, (though of the Court wherein the Action is depending) he shall incur a Præmunire.

Sect. 5. But it is provided, That nothing in the said Statute shall extend to Grants of Privilege for fourteen Years, or under, of the sole Working or Making of new Manufactures, to the true and first Inventor ; so as they be not Contrary to Law, nor Mischievous to the State, by raising Prices of Commodities at Home, or Hurt to Trade, or generally inconvenient: The said fourteen Years to be accounted from the Date of the first Letters Patens ; but such Grants shall be of the same Force as if the said Act had not been made.

Sect. 6. Arts newly brought into En- Sal. 447.
gland from beyond Sea, though they be
not new there, have been construed to be
within this Clause. But no new Invention S. 15.
concerning the Working of a Manufacture
is within the Clause, unless it be substan-
tially New, and not barely an additional
Improvement of an Old one. Neither is a S. 16.
new Invention, to do as much in a Day
by an Engine as used to employ many
Hands, within the Clause, because it is in-
convenient, in turning so many labouring
Hands to Idleness. Neither can any old S. 17.
Manufacture, in use before, be prohibited
on the Grant of the sole use of a New In-
vention.

Sect. 7. It is farther provided, That no-
thing in the Statute shall extend to any Privi-
lege, &c. before the Act granted, allowed or S. 18.
confirmed by Parliament : Nor be any way Pre-
judicial to any City, Borough, or Town Corpo-
rate, concerning any Grants to them made, or S. 19.
concern-

- concerning any Custom by or within them used; Nor unto any Corporations, Companies or Fellowships, of any Art, Trade, Occupation or Mystery: Nor to any Companies or Societies of Merchants, erected for the Maintenance, Enlargement, or Ordering of any Trade of Merchandize, &c. Nor to any Letters Patents, or Grants of Privilege concerning Printing: Nor to any Grant, &c. concerning Digging, Making, or Compounding of Salt-Peter, or a Gunpowder; or the Casting or Making of Ordnance, or Shot for Ordnance; Nor to any Grant or Letters Patents, of any Office erected before the Statute, and then in Being, and put in Execution, other than such as had been decreed by Proclamation: Nor to any Grant concerning the Digging, Compounding, or Making of Allum: Nor concerning the Licensing of any Tavern, or Selling of Wines, to be spent in a Place in the Tenure or Occupation of the Seller, &c.
- S. 20.
- a Wide
Supra.
S. 8.
- S. 22.
- S. 23.
- Sect. 8. But the said Clause concerning Allum is said to be needless, because all such Mines belong to the Owners of the Soil; and therefore no Privilege concerning them is grantable, but only in the King's Grounds.

Sect. 9. By 16 Car. 1. 21. Any Person, whether a Stranger or a Subject, may import any Quantities of Gunpowder, paying the Parliamentary Duties for the same: And any Subject of England may sell any Quantities of Gunpowder, and bring into the Kingdom any Quantities of Salt-Peter, Brimstone, or any other Materials for the making of Gunpowder. And whoever shall put in Execution any Inhibition whatsoever, whereby the Importation of Gunpowder,

Gunpowder, Salt-Peter, Brimstone, or other the Materials abovementioned shall be any ways prohibited, incurs a Præmunire.

CHAP. LXXX.

Of Forestalling, Ingrossing, and
Regrating, and other Offences
of like Nature.

Sect. 1. **A**LL Endeavours to inhanse *What a* the Common Price of a *Forestall-*
Merchandize, and all Practices which *ing at*
have an apparent Tendency that way, as *Common*
Spreading false Rumours, Buying things in *Law.*
a Market before the accustomed Hour, or
Buying and Selling again the same Thing
in the same Market, &c. anciently came
under the general Notion of Forestalling,
and are highly Criminal at Common Law.
But any Merchant may lawfully bring S. 3.
Victuals, or any other Merchandize, into
the Realm in Gross, and sell them in Gross.
But no one can lawfully buy within the
Realm any Merchandize in Gross, and sell
it in Gross again. Also it is an Offence
at Common Law, for a Man to ingross
a whole Commodity with an Intent to sell
it at an unreasonable Price, whether he
sell any Part of it or not. And even the
Buying Corn in the Sheaf is an Offence at S. 4.
Common Law.

How punished at Law.

Sect. 2. By an ancient Statute, a Fore-staller was to be grievously amerced for the first Offence; for the second, to be condemned to the Pillory; for the third, to be imprisoned; and for the fourth, to abjure the Vill. And at this Day all such Offenders are liable to Fine and Imprisonment, on an Indictment at Common Law.

Victuals to be sold at reasonable Rates.
S. 6.

Sect. 3. By 23 E. 3. 6. Butchers, Fish-mongers, Regrators, Hostlers, Brewers, Bakers, Poulterers, and other Sellers of all manner of Victual, shall be bound to sell the same for a reasonable Price, on Pain of double the Value: And the chief Officers of Towns are to see the said Statute executed, on Pain of treble the Value of the Thing sold. And by 6 R. 2. 10. 11 R.

Fish, &c. to be freely imported.
S. 7.

2. 7. and 1 H. 4. 17. Aliens, in the King's Amity, coming into the Realm with Fish, or other Victuals, shall be under the King's especial Protection, and may cut their Fishes and Victuals in Pieces, &c. and sell them at Retail, or in Gross, as to them shall seem best. And by 14 H. 6. 6. He that shall disturb any Alien so to sell his Fish, forfeits 10 l. And by 25 H. 8.

Price of Victuals set by the Officers of State.
S. 8.

2. The Lord Chancellor, and other high Officers of State, &c. may, on Complaint of any unreasonable inbansing of the Prices of Cheese, Butter, Capons, Hens, Chickens, and other necessary Victuals for Man's Sustenance, set reasonable Prices on them: And after Proclamation of such Prices, Farmers, &c. and all other Victuallers, shall sell such their Victuals at the Prices so set, under the Pains in such Proclamation. But it is provided, that the Officers of Cities, Boroughs, or Towns Corporate, and all other Persons having Authority to set Prices of such Victuals, may

S. 9.

may set them in such Manner as before the said Act.

Sect. 4. By 2 & 3 E. 6. 15. Butchers, Punishment of
Brewers, Bakers, Poulterers, Cooks, Costermongers or Fruiterers, conspiring, covenanting, pro- Conspiracy
mising, or making Oaths, not to sell their Victu- to raise the
als but at certain Prices: And Artificers, Work- Price of
men, or Labourers, conspiring, &c. not to make &c. Victuals,
or do their Work but at a certain Price, or not to S. 10.
finish what another hath begun, or to do but a
certain Work in a Day, or to work but at certain
Hours and Times, shall forfeit for the first Offence
10 l. &c. for the second 20 l. and for the third
40 l. &c. And if any such Conspiracy, &c.
be made by any Society, Brotherhood, or Compa-
ny of any Craft, Mystery or Occupation of the
Victuallers abovementioned, by the Consent of the
Major Part, they shall not only be liable to the
Punishment before appointed; but their Corpora-
tion shall be dissolved.

Sect. 5. By 3 & 4 E. 6. 21. No one, not Butter
being an Innholder, or Victualler, selling by Re- and Cheese
tail in his House, shall buy, to sell again, any how to be
Butter or Cheese, unless he sell the same again retailed,
by Retail, in open Shop, Fair or Market, not &c.
selling more than a Weight of Cheese, or a Bar- S. 11.
rel of Butter at one Time.

S. 6. By 5 & 6 E. 6. 14. Whosoever shall Who a
buy, or Cause to be bought, any Thing whatso- Forestaller
ever coming towards any Market or Fair, to be by Statute.
sold in the same; or coming towards any City, S. 12.
Port, Haven, Creek or Road, from any Parts
beyond the Sea, to be sold; or make any Bar-
gain, Contract or Promise for the having or
buying of the same, or any Part thereof, before
the same shall be in the Market Fair, City,
&c. ready to be sold, or shall make any Motion
by

by Word, or otherwise, to any Person, for the inbansing of the Price of any thing; or else move any one coming to the Market, or Fair, to forbear to bring any Thing to any Market, Fair, City or Port, &c. to be sold, shall be deemed a Foretaller.

S. 13. Sect. 7. An Indictment hereon, charging the Defendant with Meeting J. S. at such a Place, near B. and there Buying of him certain Goods, which he was about to sell in the Market of B. is insufficient, because it doth not expressly say, that the Goods were coming to the Market to be Sold.

Who a
Regrator.

S. 14. Sect. 8. And by the same Statute of 5 & 6. E. 6. 14. Whosoever shall, by any Means, Regrate, or get into his Possession, in any Fair or Market, any Corn, Wine, Fish, Butter, Cheese, Candles, Tallow, Sheep, Lambs, Calves, Swine, Piggs, Geese, Capons, Hens, Chickens, Pidgeons, Conies, or other dead Victuals whatsoever, that shall be brought to any Fair or Market to be sold, and sell the same again in any Fair or Market within four Miles, shall be taken for a Regrator.

Who an
Ingrosser.

S. 15.

Sect. 9. And whosoever shall engross or get into his Hands, by Buying, Contracting, or Promise taking, other than by Demise, Grant, or Lease of Land, or Title, any Corn growing in the Fields, or any other Corn or Grain, Butter, Cheese, Fish, or other dead Victuals whatsoever, in England, to the Intent to sell again, shall be reputed an unlawful Ingrosser.

S. 16.

Sect. 10. Salt is a Victual within this Statute, as being necessary for the Food and Health of Man, and Seasoning and making Wholesome other Victuals. But neither Apples, nor Cherries, nor other such

such like Fruits; nor Hops, nor Malt seem to be within the Statute.

Sect. 11. The Buying of Corn, with an Intent to make Starch, or Meal of it, and then to sell it, seems not to bring a Man within the above * recited Clause; which makes him an Ingrosser who buys Corn, &c. with an Intent to sell the same again. S. 18. Supra. S. 11.

Sect. 12. In an Indictment, &c. on the said Clause concerning Ingrossers; there is no need to say that the Defendant did not come by the Victual, mentioned in the Indictment, by a Demise of Land, &c. But the Defendant may give it in Evidence. S. 19.

Sect. 13. Every such Indictment, &c. must precisely follow the Words of the Statute; and therefore if it only say, that that Defendant bought so much Corn, &c. it is insufficient; for the Words are, *shall engross, or get into his Hands by buying, &c.* S. 20.

Sect. 14. By the same Statute of 5 & 6 The Pu-Ed. 6. 14. *Whoever shall be duly convicted of any of the said Offences, shall, for the first, be imprisoned two Months, and forfeit the Value of the Goods so bought, or had; and for the second, shall be imprisoned a Year, and forfeit the double Value of the Goods; and for the third, shall be set on the Pillory, forfeit all his Goods, and be committed during the King's Pleasure.*

Sect. 15. From hence it plainly follows, as well as from the general Rules of Law, that no Information, &c. for Ingrossing Corn, &c. contrary to the Statute is good, which doth not expressly shew the Quantity of the Thing ingrossed, as where it
T only

only says, that the Defendant ingrossed, *cumulum tritici*, for it cannot appear to the Court what Forfeiture the Defendant ought to incur, where the Extent of the Offence, which is to be the Measure of it, is not set forth.

Seed Corn
how to be
bought.

Sect. 16. By the same Statute of 5 & 6 Ed. 6. 14. If any one, having sufficient Corn and Grain for the Provision of his House, and Sowing of his Grounds for one Year, do buy any Corn in any Fair or Market, for the Change of his Seed, and not bring to the same Fair or Market the same Day, so much as he shall so buy, &c. and sell it if he can, at the Market Price, he forfeits the double Value of the Corn so bought.

Living
Cattle,
how to be
bought.
S. 23.

Sect. 17. And by the same Statute, Whoever shall buy any Oxen, Ronts, Steers, Kine, Heifers, Calves, Sheep, Lambs, Goats or Kids living, and sell the same again alive, unless he keep and feed them five Weeks, forfeits their double Value; one Moiety to the King, the other to him who will sue.

Corn,
Malted, or
made into
Oatmeal,
not within
the Sta-
tute.

Sect. 18. But it is provided by the said Statute, Par. 7. That the buying of Barley, Bigge, or Oats (without Forestalling) to convert it into Malt or Oatmeal, in the Buyer's own House, which shall be so converted indeed, shall not be taken to be within the said Act. And Quare, S. 25, 26. if this Exception would not have been implied from a reasonable Construction of the Statute; though it had not been expressed.

For this
see Owen,
135.

& Supra.

S. 13.
S. 27.
Corn ex-
ported.

Sect. 19. By 1 W. & M. Sess. 1. Ch. 12. When Malt, or Barley, Winchester Measure, shall be at 24 s. a Quarter, or under; Rye at 32 s. Wheat at 48 s. in any Port in England or Wales; every Person who shall put on Ship-board

board in English Shipping, the Master and two thirds of the Mariners being their Majesties Subjects, any sorts of such Corn, with Intent to export it beyond Sea, shall bring a Certificate in Writing under his Hand, concerning the Quantity and Quality of the Corn so shipp'd, to the Persons appointed to collect the Customs within the Port; and on Proof of such Certificate, by one or more on Oath; and on Bond of 200 l. by such Exporter for every hundred Tun so shipp'd; and so proportionably; that the Corn (Dangers of Seas excepted) shall be exported beyond Sea, and not landed again in England, &c. shall receive from the said Persons appointed to receive the Customs, for every Quarter of Barley or Malt, ground or unground, 2 s. and 6 d. for every Quarter of Rye, ground or unground, 3 s. and 6 d. for every Quarter of Wheat, ground or unground, 5 s. without any Custom or Fee for the same. And on Certificate from beyond Sea, under the Common Seal of a Chief Magistrate, &c. or under the Hands and Seals of two known English Merchants, &c. that such Corn was landed beyond Sea; or on Proof that it was taken by Enemies, or perished at Sea, &c. the Bond shall be delivered up to be cancelled, &c.

S. 27.

SECT. 20. By 21 Jac. 1. 22. Neither of the Butter and said Statutes of 3 & 4 E. 6. or 5 & 6 E. 6. Cheese, nor any other Provision before that Statute, concerning the Sale of Butter and Cheese, in open Shop, Fair or Market; or the Providing or Buying of Butter and Cheese, shall extend to any Cheese-monger, or Tallow-chandler, free of London, and having been an Apprentice seven Years, Trading in Butter and Cheese, for such Butter or Cheese as he shall sell in London, Westminster,

freely
bought in
London,
&c.

S. 28.

ster, or Southwark, for the victualling of any Ship, or which he shall sell by any Quantities at one time, and to one Person, not exceeding four Weigh of Cheese, or four Barrels of Butter, without Fraud, so as he sell the same in open Shop, Fair, or Market. Provided, that if the Quarter-Sessions of any County shall declare, that such Traders shall forbear to buy any Butter or Cheese for any Time, within such County; in such Case the said Traders, during such Restraint, buying and selling by Retail, contrary to any of the said Acts, shall not be freed from the Penalties thereof.

Beef Pork, Butter, Cheese, Candles, freely exported. Sect. 21. By 3 & 4 W. & M. 8. Every Person may export, into any Part of the World, in Amity with the Crown, all sorts of Beef, Pork or Hogsflesh, Butter, Cheese, or Candles, free from any Custom or Importation whatsoever.

S. 29. Ale, Beer, Cider, and Mum exported. Sect. 22. By 1 W. & M. Sess. 1. Ch. 22. Any one may export Strong Ale, Strong Beer, Cyder or Mum, to be spent beyond Sea, paying Custom for it at the Rate of one Shilling for every Tun, in such Manner as is set forth in the said Statute.

Fish, re-tailed, &c. Sect. 23. By the said Act of 5 & 6 E. 6. 14. Par. 7. The Buying of dried or salted Fish, Herring or Sprats, (not forestalled) and sold for reasonable Prices, shall not be deemed contrary to the said Act. And (by Par. 15.) any Subject, dwelling within one Mile of the main Sea, may buy all manner of Fish, fresh or salted (not Forestalling the same) and sell it again at reasonable Prices. And by 5 El. 5. Par. 13. So much of all Statutes against Regrators, Ingrossers, and Forestallers, as concerneth the Buying of Sea-Fish unsalted, or Mud-Fish, to be taken and brought

in any
repealed
Buyer
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6. 14.
Victuals
as conce
Forestal
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Ed. 6. 1
r Cheese
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House;

in any Engliſh Veſſel into this Realm, ſhall be repealed for ſo much of the ſaid Fiſh, as any Buyer on the Sea, by way of Foreſtalling or Regratiſing, ſhall bring and diſcharge in any Port within this Realm.

Sect. 24. And the ſame is alſo enacted Wine, Oyl, Sugar, Salt, and foreign Viſtuals. by the ſaid Clause of 5 Eliz. 5. in relation to Wine, Oyl, Sugar, and Salt. And it is farther enacted, by 13 Eliz. 25. Par. 21. That 5 & 6 Ed. 6. 14. Shall not extend to a- S. 34, 35. ny Wines, Oyls, Sugars, Spices, Currants, nor other foreign Viſtuals, brought into this Realm from beyond Sea; Fiſh and Salt only excepted.

Sect. 25. The ſaid Statute of 5 & 6 Ed. Viſtual- 6. 14. is expreſs, That the Buying of any lers, Fiſb- Viſtuals by any Fiſhmonger, Butcher or Poulterer, mongers, as concern his own Miſtery, otherwiſe than by Butchers Foreſtalling, who ſhall retail the ſame again at and Poul- terers, may reaſonable Prices; or the Buying of Wine, or o- retail. ther dead Viſtuals, meet for Man's Suſtenance, S. 36. by any Innholder, or other Viſtualler, to retail the ſame within his Houſe, or to Neighbours for their Suſtenance, at reaſonable Prices, ſhall not be deemed contrary to the Act. Yet it hath been adjudged, that any of the ſaid Perſons may be indicted for ingroſſing Viſtuals, with an Intent to ſell them again, againſt the Form of the Statute.

Sect. 26. By the ſaid Statute of 5 & 6 Badgers, Ed. 6. 14. The Buying of Corn, Fiſh, Butter &c. to be r Cheeſe, by any ſuch Badger, Lader, Kidder, licensed, r Carrier, as ſhall be allowed by three Juſtices &c. of Peace, &c. which ſhall ſell, or deliver, in S. 38. open Fair at Mark-t; or to any other Viſtualler; or to any other Perſon, for the Proviſion of his Houſe; all ſuch Corn, &c. as any ſuch Perſon

shall buy, and that within one Month after he shall so buy the same, &c. without Forestalling, shall not be deemed against the Statute.

S. 39.

Seft. 27. And by the same Statute, Par. 12. Every Person, who shall be allowed by three Justices of Peace, may buy (otherwise than by Forestalling) Corn, Grain or Cattle, to be carried by Water from one Place within this Realm, or Wales, to any other Place within the said Realm, &c. if he, without Fraud, embark within Forty Days after he shall have bought the same, &c. and with all Expedition transport the same, according to his Cocket, &c. and bring a Certificate from the Place where he unloads, &c.

S. 40.

Seft. 28. And by the same Statute, Par. 16, 17. Any known common Drover, licensed by three Justices of Peace, &c. may lawfully buy Cattle (so that he do it without Forestalling) in such Shires where Drovers had been wont, at their Pleasure, to buy Cattle, and may sell the same, as aforesaid, at reasonable Prices, in Fairs and Markets, distant from the Place where he shall buy them, Forty Miles.

S. 41.
Who may
be a Bad-
ger, &c.

Seft. 29. By 5 Eliz. 12. and 13 Eliz. 25. Par. 20. No Drover of Cattle, Badger, Lader, Kidder, Carrier, Buyer or Transporter of Corn or Grain, Butter and Cheese, shall be licensed in any County, except in Westmoreland, Cumberland, Lancaster or York, but only in open Quarter-Sessions, in the Shire where such Person dwells, and shall have dwelled three Years next before: And none shall be admitted to any of the said Offices, but only such as are, or have been, married Men, and are, at the Time of the License, Householders, and not Retainers to any Person, and of the Age of Thirty Years; and

and fuch Licenfes fhall be good but for a Year after the Date, and fhall bear Date of the Day and Place of the Seflions, and fhall be figned with the Hands and Seals of three Juftices there prefent, whereof one of the Quorum, on Pain of 5 l. for every Perfon taking any License contrary hereto, &c. And the Juftices in the faid Seflions fhall, by their Difcretion, take Recognifance of the Perfons fo licensed, that they fhall not, by colour of their License, do any thing contrary to the faid Statute of 5 & 6 Ed. 6. 14. And every fuch License and Recognifance, fhall be made and written by the Clerk of the Peace, or by his Deputy, and no other Perfon; and every Perfon who fhall have fuch License, fhall pay to the Clerk of the Peace for Making it, 12 d. only; and for the Recognifance 8 d. and for Regiftring the License and Recognifance 4 d. And the faid Clerk, &c. fhall keep a Register Book, and register therein all the Names and dwelling Places of the Perfons fo licensed, with a brief Entry of the Licenfes, &c. and fhall bring the fame to every Seflions. And no Perfon fhall, by Authority of any fuch License, buy any Corn, or Grain, cut of open Fair, or Market, to fell again, unlefs he be thereunto licensed by exprefs Words, on Pain of 5 l. &c. But it is provided by the faid Statute of 5 Eliz. c. 12. That nothing in it fhall prejudice the Liberty of any City, or Town Corporate; but that every of them may license Purveyors, for their Provifion as before.

Seft. 30. The faid Statute of 5 & 6 Ed. Lessors of 6. 14. Par. 7. is exprefs, That the Taking of Land may any Cattle, &c. or any other Thing in the faid ^{referve} Corn, &c. Statute mentioned, referved without Fraud, on S. 42.

Of Forestalling, Ingrossing, &c.

any Lease for Life, or Years, shall not be deemed contrary to the said Statute.

Sect. 31. The said Statute also provides, That nothing in it shall extend to any common Provision, to be made without Fraud, of any of the Things in the Statute, for any City, Borough, or Town Corporate.

Such Offenders, how proceeded against.

Sect. 32. By 5 and 6 E. 6. 14. and 5 Eliz. 12. Every Sessions of the Peace may inquire and determine the Offences, contrary to either of the said Acts, by Inquisition, Presentment, Bill or Information, and by Examination of two Witnesses, or by any of the said Ways, by their Discretion, and make Process thereon, as though they were indicted before them, &c. and upon a Conviction, by Suit of any other than the King, make Extracts of a Moiety of the Forfeitures to be levied to the King's Use, &c. and make Execution of the other Moiety for the Complainant, &c. by Fieri Facias, or Capias, as the Justices at Westminster use to do: And if such Conviction shall be at the King's Suit, the whole shall be levied to his Use only.

In any County.

Sect. 33. And it is provided, by 31 Eliz. 5. which restrains Prosecutions on Penal Statutes to their proper Counties, That nothing in it shall extend to any Information, &c. for any Offence in any Statute against Ingrossing, Regrating or Forestalling, where the Penalty shall appear to be to the Value of 20 l. but that every such Offence may be laid in any County.

C H A P. LXXXI.

Of Barratry.

Sect. 1. **A** Barrator is a common *S. 1.*
 Mover, Exciter, or *Who a*
 Maintainer of Suits and Quarrels, either *Barrator.*
 in Courts, or in the Country: As where
 one makes it his Business to raise Diffen-
 tions among Neighbours, by stirring them
 to vexatious Law Suits; or by assisting
 them in the taking or holding Possession *S. 2.*
 of Lands in Controversy; or by spreading
 false Rumours and Calumnies, &c.

Sect. 2. But it is (a) no Instance of Bar- (a) *S. 3.*
 ratry for a Man to bring ever so many
 false Actions in his own Right; unless they
 are meerly groundless, and without any
 colour of Right, and only brought for
 Vexation and Oppression. (b) Neither is it (b) *S. 4.*
 an Act of Barratry in an Attorney to
 maintain a groundless Action, to the
 Commencing of which he was not pri-
 vy. (c) Neither can any one single Act (c) *S. 5.*
 whatsoever make a Man a Barretor; for
 the Indictment must have the Words *Com-*
munis Barreclator. (d) Neither, as some say, (d) *S. 6.*
 can a Feme Covert be indicted as a com-
 mon Barrator. But *Quare.*

Sect.

How pun-
ished.

Sect. 3. By 34 E. 3. 1. In every County shall be assigned, for the keeping of the Peace, one Lord, and with him three or four of the most worthy of the County, &c. and they shall have Power to restrain Offenders, Rioters, and all other Barrators, and to pursue, arrest, take and chastise them, according to their Offence.

S. 8. &c. And it hath been holden, that these
See B. 2. Words give Justices of Peace, as such, cog-
Ch. 8. nissance of Barratry. But *Quære*

(a) S. 9. Sect. 4. Every (a) Indictment of this kind must have the Words *Communis Barredator*,

(b) S. 10. and (b) may conclude *contra formam Statuti*; though no Statute be made directly against it; but only for the Punishment of it;

(c) S. 11. and, as some say, (c) the Offence needs not be alledged in any certain Place, because, since it consists in the Repetition of several Acts, it cannot but be intended to have happended in several Places; for which Cause it is said, that the Jury for the Trial ought to come from the Body of the County. But (d) no Indictment of this kind
(d) S. 12. is good, without the Words *contra pacem*.

S. 13. Sect. 5. The Prosecutor, before he proceeds to a Trial of an Indictment of Barratry, must give the Defendant a Note of the particular Matters which he intends to prove; for otherwise it will be impossible to prepare a Defence against so general a Charge.

S. 14. Sect. 6. The Defendant convicted of Barratry, if he be a common Person, may be fined and imprisoned, and bound to the good Behaviour. And if he be of a Profession

feſſion relating to the Law, he may be farther puniſhed by being diſabled to practice for the Future.

C H A P. LXXXII.

Of Usury.

Offences not Capital, more immediately againſt the Subject, not amounting to an actual Diſturbance of the Peace, and committed by private Perſons, without any relation to an Office, and neither infamous nor groſſy ſcandalous, and more immediately affecting the Interests of particular Perſons, are,

1. Usury.
2. Maintenance.
3. Buying or ſelling pretended Title.

Señ. 1. Usury, in a ſtrict Senſe, is a S. 1.
Contract on the Loan of Money, to give *What is*
the Lender a certain Profit for the Uſe of *Usury.*
it, on all Events, whether the Borrower make any Advantage of it, or the Lender ſuffer any Prejudice for the want of it, or whether it be repaid on the Day appointed, or not. But in a larger Senſe, all due Advantages taken by a Lender againſt a Borrower, ſeem to come under the Notion of Usury, whether there were any Contract

tract concerning them or not; as where one in Possession of Land, made over to him for the Security of a Debt, retains his Possession after he has received all that is due from the Profits of the Land. But an Agreement to pay a certain Penalty, on the Non-payment of a Principal Debt at a certain Day, is not usurious, because the Borrower has it in his Power wholly to discharge himself, by repaying the Principal at the Day.

S. 3.

*Whether
unlawful
at Com-
mon Law.*

S. 4.

S. 5.

*5 Ed. 6.

20. 13

Eliz. 8.

21 Jac.

1. 17.

S. 6.

S. 7.

Secl. 2. Anciently it was holden unlawful for a Christian to take any kind of Usury; and whoever was guilty of it, was punishable by Church Censures in his Life, and after his Death by Forfeiture of his Chattels to the King, and of his Lands to the Lord. Also, by the Makers of some * Statutes since the Reformation, all kinds of Usury seem to have been holden contrary to good Conscience. And about the Time of the Making of those Statutes it was the general Opinion, that no Action lay on any Promise to pay any kind of Use for Money; because all such Contracts were thought to be unlawful.

Secl. 3. But the contrary Opinion seems of late to have generally prevailed, for what Reason can there be in the Nature of the Thing, why he who has an Estate in Money, may not as reasonably make a fair Advantage of it, as another who has an Estate in Land: And as to those Passages in the Mosaical Law to the Contrary, it is generally thought that they were meerly Political, and consequently binding

ding only to the *Jewish Nation*; for if all Usury had been against the Moral Law, it is not to be imagined that the *Jews* would have been suffered to take it of Foreigners.

Sect. 4. By 12 Annæ 16. No Person, on S. 8.
 any Contract made after the 29th of September, 1714. (which Words, no Way, (a) extend to ^{How prohibited by} Contracts made since that Time) shall take, ^{Statute.} (a) S. 10.
 directly or indirectly, for Loan of any Money, Wares, or Commodities whatsoever, above the the Value of five Pounds for one Hundred for a Year, and so after that Rate for a greater or lesser Sum, or for a longer or shorter Time: And all Bonds, Contracts, and Assurances whatsoever, for Payment of any Principal, or Money to be lent, or covenanted to be performed, upon or for any Usury, whereupon or whereby shall be reserved or taken above the Rate of five in the Hundred, shall be void. (viz. (b) whether the Contract be by Specialty, or (b) S. 20.
 Matter of Record, or by Parol; and in this last Case it may be avoided in Evidence on the general Issue; but in the former it must be pleaded. And it is not (c) (c) S. 21.
 Material, whether the Payment of the Usury be secured by one or more Conveyances, for all are void. Neither (d) is (d) S. 22.
 it material whether the whole be reserved by way of Interest, or Part under that Name, and Part by way of Rent for a House, notoriously exceeding the true Value.) And whoever shall on any Contract, made after the said 29th of September, take, accept and receive, by means of any corrupt Bargain, Loan, Exchange, Gherisance, Shift, or Interest

- Interest of any Thing whatsoever, or by any deceitful Ways and Means, or by any Covin, Engine, or deceitful Conveyance, for the forbearing or giving Day of Payment for one Year, of and for their Money or other Thing, above five Pounds for one Hundred, and so after that Rate shall forfeit for every such Offence the treble Value of the Things so lent, bargained, exchanged, or shifted. And whoever (e) takes usurious Interest, by virtue of an Agreement subsequent to a Contract fairly made for lawful Interest, is within this Clause; but the first Contract is not avoided by such a subsequent Agreement.
- S. 12.

Sect. 5. By the same Statute Every Scrivener, Broker, Solicitor, and Driver of Bargains for Contracts, who shall, after the said 29th of September, receive, directly or indirectly, any Money or other Thing, for Brokage, Solliciting, Driving or Procuring the Loan, or Forbearing of any Money, over and above the Rate of 5 s. for the Loan or forbearing of 100 l. for a Year, and so ratably; or above 12 d. over and above Stamp Duties, for the Making or Renewing of the Bond or Bill, for Loan, or Forbearing thereof, or for any Counterbond or Bill concerning the same, shall forfeit for every Offence 20 l. &c. and suffer half a Year's Imprisonment, &c.

- S. 11. Sect. 6. A Bond made to secure a just Debt, payable with lawful Interest, shall not be avoided by reason of any corrupt Agreement between the Obligors, to which the Obligee is altogether a Stranger.

- S. 13. Sect. 7. In an Assurance for the Payment of 50 s. for the Use of 100 l. for six Months, the Computation shall be by Kalendar

lendar Months; or otherwise the Interest would exceed the Statutable Rate.

Seç. 8. Interest voluntarily paid before the Time when 'tis strictly due, without any corrupt Practice, or any previous Agreement at the Making of the Contract, does not seem to be within the Statute. S. 14.

Seç. 9. The Grant of an Annuity for Lives, exceeding the known Proportion for Contracts of this Kind, made in Consideration of a certain Sum of Money, is not within the Statute, unless there were some underhand Bargain to secure the Repayment of the Consideration Money. Neither is any Contract usurious, by which the Lender hazards the Loss of his whole Money; as where, on the Loan of a certain Sum for a Year, for the Viçtualling of a Ship, it is agreed, that if the Ship return, the Lender shall have so many Fishes at a Rate exceeding the Statutable Interest, and if it never return, &c. that he shall have nothing. Or where, on the Loan of 30 l. a Bond is given for the Payment of 100 l. upon the Marriage of a Daughter with one of the Parties; provided that if either of them shall die before, nothing shall be paid: But if the Interest only be hazarded by such a Contract, and the whole Principal secured, the whole is usurious: And it hath been resolved, that an Agreement to pay more than the Lawful Interest for a certain Sum at such a Day, if B. be then alive, and if dead then such a Sum, which is less than the Principal, is void by the Statute; for if it were S. 15.

S. 16.

were not, it would be easy to avoid the Statute, by adding a great Number of Lives.

- Sect.* 10. An Assurance made in Pursuance of a fair Agreement for Statutable Interest, shall not be avoided by the Scriveners Fault in drawing it up; as where
- S. 17. the Parties agree, that 5 *l.* shall be paid for 100 *l.* for a Year, and the Scrivener in drawing the Bond doth, without the Knowledge of the Parties, who are illiterate, make the 5 *l.* payable at the half Year; or where, on the fair Loan of 100 *l.* a Mortgage is made for it, with a Proviso to be void at the End of one Year, on Payment of 105 *l.* without any Covenant for the Mortgagor to take the Profits 'till Default of Payment; so that in Strictness the Mortgagee is entitled both to the Interest and Profits.

- S. 18. *Sect.* 11. A Loan of Money for Statutable Interest, shall not be esteem'd usurious, by reason of any Expectations which the Lender may have of a voluntary Gratuity to be given him by the Borrower.

- S. 19. *Sect.* 12. A Reservation of more than the Statute allows for Interest, upon the Non-payment of the Principal, at the End of a Year, is not usurious, because it is in the Borrower's Power to avoid the Payment of the Money so reserved, by paying the Principal at the Day. Yet if it appear upon the whole Circumstances, that such Clause was inserted with an Intent to evade the Statute, the whole Contract is void.

Sect.

Sect. 13. A second Bond, made after the Forfeiture of a former, for the Receipt of Interest, according to the Penalty of the forfeited Bond, seems to be within the Statute; for if such a Practice were allow'd, it would be an easie Inlet to illude the Statute, and there is no more due in Conscience, after the Forfeiture of the Bond than before.

S. 23.

Sect. 14. In pleading an usurious Contract, by way of Bar to an Action, you must set forth the whole Matter specially, because within your Privy: But in an Information on the Statute, for such a Contract, it is sufficient to set it forth generally.

S. 24.

Sect. 15. If an usurious Contract in the County of *D.* be pleaded to an Action on a Bond laid in the County of *E.* the Trial shall be in the County of *D.* for the Ground of the Matter is the usurious Contract; and the Bond is confest.

S. 26.

Sect. 16. He who hath agreed to pay Money on an usurious Contract, is no Witness on an Information against the Usurer, unless he hath paid off the whole Debt; for by such Means one might avoid his own Deed.

S. 27.

Sect. 17. An Information for an usurious Contract on a Loan of Money, cannot be supported by Evidence of such a Contract on a Bargain concerning Wares sold.

S. 28.

C H A P. LXXXIII.

Of Maintenance.

- Sect. 1.* **M**Aintenance is commonly taken in an ill Sense, and in general signifies an unlawful Upholding of Quarrels, or Sides, to the Hindrance of common Right; and if it be in the Country, it is called *ruralis*, as where one assists another in his Pretensions to certain Lands, by taking, or holding the Possession of them by Force or Subtilty; or where one stirs up Quarrels and Suits in the Country, in relation to Matters wherein he is not concern'd; and this is punishable by Fine and Imprisonment, but is said not to be actionable. But if such Maintenance be in a Court of Justice, it is called *curialis*; which, if it be carried on without any Contract to have Part of the Thing in Suit, goes generally under the common Name of Maintenance; but if it be carried on upon such a Contract, it is called *Champery*; and if it relates to the Labouring a Jury, it is called *Embracery*.
- S. 1.
- S. 2.
- S. 3.

As to Maintenance in general, I shall endeavour to shew.

x. What shall amount to an Act of Maintenance.

2. How

Of Maintenance.

291

2. How some Acts of this kind may be justified.
3. How such Offences are punishable.

Sect. 2. As to the first Point it is said, S. 4.
that not only he who assists another with Money, in his Cause, as by retaining Counsel for him, or otherwise bearing him out in the whole, or Part of the Expence, but also he who, by his Friendship or Interest, saves him that Expence, which otherwise he may be put to, is guilty of Maintenance; as where one Persuades, or but endeavours to persuade a Man to be of Counsel for another *gratis*. S. 5.

Sect. 3. Also it seems to be an Act of Maintenance to open Evidence to the Jury, or to give Evidence officiously, without being called upon to do it, or to speak in a Cause as one of Counsel with the Party, or to retain an Attorney for him. And some have said, that it is Maintenance even barely to go along with him to enquire for a Person learned in the Law. S. 6.

Sect. 4. It seems to be Maintenance for a Man of great Power and Interest to say publickly, that he will spend 20 *l.* on one Side, or that he will give 20 *l.* to labour the Jury; and it hath been said to be Maintenance for such a Person to come to the Bar with one of the Parties, and stand by him while his Cause is tried without saying any thing. But a Promise to maintain another is not Maintenance, unless it be in respect of the publick Manner S. 7.

in which it is made, or the Power of the Person, &c.

- S. 8. *Sect. 5.* It is said to be Maintenance for a Juror to solicit a Judge to give Judgment according to the Verdict; but it seems to be no Maintenance for a Juror to exhort his Companions to join with him in such a Verdict as he thinks Right.

- S. 9. *Sect. 6.* It seems to be no Maintenance for a Man to give another friendly Advice what Action is proper for him to bring for such a Debt, or what Method is safest to free him from such an Arrest. But it is said, that a Man of great Power, not learned in the Law, may be guilty of Maintenance, by telling one who asks his Advice, that he has a good Title.

- S. 10. *Sect. 7.* It is no Maintenance to give a Man Money who has no Suit then depending, unless it plainly appear, that it was given with a Design to assist him in a Suit intended; which Suit is afterwards actually brought.

- S. 11. *Sect. 8.* It is as much an Act of Maintenance to support a Man after Judgment given, as to do it hanging the Plea.

- Sect. 9.* As to the second Point, viz. how some Acts of this kind may be justified. It seems clear, that not only those who have an actual Interest in the Thing in Variance, as (a) those who have a Reversion, Expectant on an Estate Intail, or on a Lease for Life, or Years, &c. but also those who have a bare (b) Contingency of an Interest in the Lands in Question; which possibly may never come in esse: And even (c) those

Maintenance by
Persons interested.

(a) S. 12.

(b) S. 13.

(c) those
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(c) those who by the Act of God have the immediate Possibility of such an Interest, as Heirs apparent, or the Husbands of such Heirs, though it be in the Power of others to bar them, may lawfully maintain another in an Action concerning such Lands. And if a (d) Plaintiff, in an Action of Trespass alien the Lands, the alienee may produce Evidence to prove, that the Inheritance, at the Time of the Action, was in the Plaintiff, because the Title is now become his own. (c) S. 14. (d) S. 12.

Sect. 10. Also he who is bound to warrant Lands, may lawfully maintain the Tenant in the Defence of his Title, because he is bound to render other Lands to the Value of those that shall be evicted. S. 16.

Sect. 11. Also he who has an equitable Interest in Lands, or Goods, or even in a Chose in Action, as a *cestui que Trust*, or a Vendee of Lands, &c. or an Assignee of a Bond, for good Consideration, may lawfully maintain a Suit concerning the Thing in which he hath such an Equity: And from the same Ground it seems plainly to follow, that the Grantee of a Reversion, for good Consideration might, without any Attornment, maintain the Tenant of the Land, before the late Statute, which makes such Attornment needless. S. 17. S. 15.

Sect. 12. Wherever any Persons claim a common Interest in the same Thing, as in a Way, Church-Yard, or Common, &c. by the same Title, they may maintain one another in a Suit concerning such Thing; and a Man's Bail may take Care to have his

S. 19. his Appearance recorded : But, as some say, they can't safely intermeddle farther.

Maintenance by
Kinsmen.
S. 20.

Sect. 13. Whoever is of Kin, or God-father to either of the Parties, or related by any kind of Affinity, still continuing, may lawfully stand by him at the Bar, and counsel him, and pray another to be of Counsel for him ; but cannot lawfully lay out his own Money in the Cause, unless he be either Father, or Son, or Heir apparent to the Party, or Husband of such an Heiress.

Maintenance of a
Tenant by
his Lord.
S. 20.

Sect. 14. Not only the actual Lord, but also the *cestui que use* of a Seignior, may come with the Tenant to a Trial, in an Assize against him, and stand by him and assist him ; and also pray the Sheriff to return an Indifferent Jury : And it seems a plausible Opinion, that he may also justify laying out his Money in Defence of his Tenants Title. Also the Lord of a Town, may maintain the Inhabitants in an Action, wherein the Right to their common Burying-place is questioned, by shewing authentic Evidence of it to the Jury.

Of a Lord
by his
Tenant.
S. 21.

Sect. 15. A Tenant may lawfully come with his Lord, and stand with him at a Trial.

Of a Servant by his
Master.
S. 22.

Sect. 16. A Master may go along with his Servant, or with his domestick Chaplain, to retain Counsel ; also he may pray one to be of Counsel for him, and may go with him, and stand with him, and aid him at the Trial ; but ought not to speak in Court in favour of his Cause. Also if the Servant be arrested, the Master may

may assist him with Money to keep him from Prison, that he may have the Benefit of his Service: But the Master cannot safely lay out Money for the Servant in a real Action, unless he have some of his Wages in his Hands: But those, with the Servant's Consent, he may safely disburse.

Sect. 17. A Person retained generally as a Servant, and not for a particular Occasion only, may lawfully ride about to speed his Master's Business, and may go to Counsel for him, and shew his Evidences to the Counsel, or to the Jury, and stand by him at a Trial; but cannot lawfully lay out his own Money in the Suit.

Of a Master by his Servant.
S. 23.

Sect. 18. A Man may lawfully go with his Neighbour to inquire for a Person learned in the Law; but ought not to give him Money towards carrying on his Suit.

Of a Neighbour by a Neighbour.
S. 24.

Sect. 19. Any one may lawfully give Money to a poor Man, to enable him to carry on his Suit: Also any one may lawfully go with a Foreigner, who cannot speak English, to a Counsellor, and inform him of his Case.

Maintenance out of Charity.
S. 25.

Sect. 20. A Counsellor, having received his Fee, may lawfully set forth his Client's Cause to the best Advantage; but can no more justify Giving him Money to maintain his Suit, or Threatning a Juror, than any other Person.

Maintenance by Counsellors.
S. 26.

Sect. 21. An Attorney, specially retained, may lawfully prosecute or defend an Action in the Court wherein he is an allowed Attorney, and lay out his own Money in the Suit, and maintain an Action

By Attornies.
S. 27.

against

against his Client for the Money so laid out, by virtue of the Retainer, without any special Promise. Also an Attorney, so retained, may in like Manner maintain his Client in a Court wherein he is not an allowed Attorney, but, as some say, cannot have an Action for the Money laid out in the Suit, without a special Promise. But an Attorney, who maintains another, is no way justified by a general Retainer, to prosecute for him in all his Causes; neither can any Attorney lawfully carry on a Cause for another at his own Expence, with a Promise never to expect a Re-payment. And it is Questionable, whether Solicitors, who are no Attornies, can, in any Case, lawfully lay out their own Money in another's Case.

- §. 28. *Señ. 22.* But Counsellors and Attornies using deceitful Practice in Maintenance of their Clients Causes, are punishable by the Common Law, as well as by the Statute of *Westminster* 1. 28. which enacts, *That if any Serjeant, Pleader, or other, (viz. whether he be Sworn as a Serjeant is, or not Sworn) do any Manner of Deceit or Collusion in the King's Court, or consent to it, in Deceit of the Court, or to beguile the Court, or the Party, and thereof be attainted, he shall be imprisoned a Year and a Day, and from thenceforth shall not be heard to plead in the Court, &c.*
- §. 29. *Señ. 23.* It is an Offence within this Statute, for an Attorney to sue out an *Habere facias seisinam*, falsely reciting a Recovery where there was none; and by colour thereof

§. 31.

thereof to put the supposed Tenant in the Action, out of his Freehold.

Señ. 24. Also it is an Offence within the Statute, to bring a *Precipe* against a poor Man, having nothing in the Land, on Purpose to oust the true Tenant; or to procure an Attorney to appear for a Man, and confess a Judgment without any Warrant; or to plead a false Plea, known to be utterly groundless, and invented merely to delay Justice, and abuse the Court.

S. 32.

S. 33.

S. 34.

Señ. 25. As to the third Point, viz. in what Manner Offences of this Kind are punishable; it is said, that by the Common Law all unlawful Maintainers are not only liable to render Damages in an Action, at the Suit of the Party grieved, but may also be indicted, and fined and imprisoned, &c. And it seems, that a Court of Record may commit a Man for an Act of Maintenance in the Face of it.

Maintenance, how
punished.
S. 35.

Señ. 26. By 1 Ed. 3. 14. and 20 E. 3. 4. None of the King's Ministers, nor no great Man of the Realm, by himself, nor by other, by sending of Letters, nor otherwise; nor none other great nor small, shall take upon them to maintain Quarrels nor Parts in the Country, to the Disturbance of common Right.

Señ. 27. And by 1 R. 2. 4. No Person whatsoever shall take or sustain any Quarrel by Maintenance in the Country, or elsewhere, on grievous Pain; that is to say, the King's Counsellors, and great Officers, on a Pain that shall be ordained by the King himself, by the Advice of the Lords of his Realm, and other Officers of the King, on Pain to lose their Offices, and to be imprisoned

imprisoned and ransomed, &c. And all other Persons, on Pain of Imprisonment and Ransom, &c.

- Sect. 28.* Null tiel Record is a good Plea to an Action on these Statutes, by which it appears, that they extend not to the Taking out an Original, which is never returned: But they extend as well to Maintenance in a Court Baron, as to Maintenance in a Court of Record: Neither is it material, whether the Plaintiff in the Action, wherein there was such Maintenance, were non-sued, or recovered. But it is * said, that none of the Statutes of Maintenance extend to a Suit in the Spiritual Court.
- S. 39.*
- S. 38.*
- S. 40.*
- * *S. 45.*

- Sect. 29.* He who fears that another will maintain his Adversary, may, by way of Prevention, have an Original grounded on these Statutes, prohibiting him to do it.
- S. 41.*

Sect. 30. All Persons are prohibited to give or receive Liveries, or Badges for Maintenance, under severe Penalties, by 1 R. 2. 7. 7 H. 4. 14. 13 H. 4. 3. & 8 Ed. 4. 2.

Sect. 31. By 32 H. 8. 9. No Person shall unlawfully maintain, or cause or procure any unlawful Maintenance, in any Suit, in any of the King's Courts, where any Person shall have Authority, by the King's Commission, Patent, or Writ, to hold Plea of Lands, or to examine, bear or determine any Title of Lands, &c. And no Person shall unlawfully maintain, for Maintenance of any Suit or Plea, any Person or Persons, or embrace any Freeholders or Jurors, or suborn any Witness by Letters, Rewards or Promises,

misses, or any other sinister Means, to maintain any Matter or Cause, or to the Disturbance of Justice, &c. on Pain of 10 l. one Moiety to the King, the other to the Informer.

Sect. 22. In an Information hereon, it is not sufficient to say, that the Defendant maintained the Party, without adding, that he did it unlawfully; neither is it sufficient to say, that a Bill was exhibited, without farther shewing, that a Plea was depending.

S. 44.

S. 46.

C H A P. LXXXIV.

Of Champerty.

Sect. 1. **C**Hamperty is the unlawful Maintenance of a Suit, in Consideration of some Bargain to have Part of the Thing in Dispute, or some Profit out of it; as to which it is enacted, by the Statute of *Westminster* 1. 25. *That no Officers of the King, by themselves, nor by other, shall maintain* (viz. either on the Part of the Plaintiff, or Defendant) *Pleas, Suits, or Matter hanging in the King's Courts* (viz. of Record) *for Lands, (a) Tenements, or other* (a) *Things, (viz. (b) either in Actions Real or (b) Personal) for to have Part or Profit thereof,* (which Words include a grant of Rent out of the Lands in Question, but not a Grant out of the other Lands) *by*

S. 1.

S. 9.

S. 4.

S. 6.

S. 7.

Covenant

S. 5. *Covenant made between them, (viz. by any Contract, whether by Writing or Parol) and he that doth, shall be punished at the King's Pleasure.*

S. 10. *Sect. 2. A Grant of Part of a Thing in Suit, made in Consideration of a precedent Debt, is not within the Meaning of the Statute; but such only as is made in Consideration of the Maintenance.*

S. 8. *Sect. 3. In a Prosecution on this Statute it doth not seem material, whether the Plea, wherein the Maintenance is alledged, be determined or not.*

S. 12. *Sect. 4. And by the Statute of Westminster 2. 49. The Chancellor, Treasurer, Justices, nor any of the King's Counsel, no Clerk of the Chancery, nor of the Exchequer, nor any Justice or other Officer, Clerk or Lay, (under which Words, no other Persons are included but only the Officers named) shall not receive any Church or Advowson, or Tenement in Fee, by Gift, or by Purchase, or to Farm, nor otherwise, so long as the Thing is in Plea, &c. nor shall take no Reward thereof, on Pain that both the Purchaser and Seller shall be punished at the King's Pleasure. And it is no Excuse of such a Purchase by such an Officer, that it was made in Consideration of Kindred, or for any other good Consideration, or that he did not maintain the Party, &c. But in the Case of a common Person, such a Purchase would not be within the Statute.*

S. 13. *Sect. 5. The Statute of 28 Ed. 1. 11. reciting, That the King had before ordained by Statute, that none of his Ministers should take*

no Plea for Maintenance, and that other Officers were not bounden, enacts, that no Officer, nor any other, (for to have Part of the Thing in Plea) shall not take upon him the Business that is in Suit; nor none, upon any such Covenant, shall give up his Right to another; and that if any be attainted thereof, the Taker shall forfeit to the Value of the Part purchased for such Maintenance: And to obtain this, whosoever will, shall be received to sue for the King, before the Justices before whom the Plea hangeth. But no Person shall be prohibited hereby to have Counsel of Pleaders, or of learned Men in Law, for his Fee, or of his Parents and next Friends.

Sect. 6. Champerty in any Action at Sect. 15. Law, seems to be agreed to be within the Statute; and a Purchase of Land, while a Suit in Equity concerning it is depending, hath also been holden to be within it. Also a Lease for Life, or Years, or a voluntary Gift of Land, hanging a Plea, is as much within the Statute, as a Purchase for Money. But neither a Conveyance executed, hanging a Plea, in Pursuance of a precedent Bargain; nor any Surrender by a Lessee to his Lessor; nor any Conveyance, or Promise thereof, made by a Father to his Son, or by any Ancestor to his Heir apparent; nor a Gift of Land in Suit, after the End of it, to a Counsellor for his Wages, without any kind of precedent Bargain relating to such Gift, are within the Meaning of the Statute.

S. 16.

S. 14.

S. 17.

S. 18.

S. 19.

C H A P. LXXXV.

Of Embracery.

- S. 5. *Sect. 1.* **A**Ny Attempt by either Party, or a Stranger, to corrupt or influence a Jury, or to incline them to favour one Side, by Gifts or Promises, Threats or Persuasions, or by Instructing them in the Cause, (or any other way, except by opening and enforcing the Evidence, by Counsel, at the Trial) come under the Notion of Embracery, whether the Jurors give any Verdict or not, and whether the Verdict be true or false. And it is an Offence of this kind, for a Stranger barely to labour a Juror to appear, and act according to his Conscience; or for any Person to labour a Juror not to appear.
- S. 1. But it is no Offence for one who can justify any other Act of Maintenance, to labour a Juror to appear, and give a Verdict according to his Conscience.
- S. 2. *Sect. 2.* It is not safe to give Money to a Juror after the Verdict, unless it be openly and fairly given to all alike, in Consideration of the Expences of their Journey, and Trouble of their Attendance, &c.
- S. 3.

Sect. 3. The bare Giving of Money to another, to be distributed among Jurors, favours of Embracery, whether any of it be distributed or not. And it is an Offence of the like kind, for a Person, by indirect Means, to procure himself or another to be Sworn of a *Tales*, in order to serve one Side. And it is as Criminal in a Juror, as in any other Person, to endeavour to prevail on his Companions to give a Verdict on one Side, by any other Arguments besides the Evidence produced, and the general Obligations of Conscience, &c.

S. 4.

Sect. 4. Embracery is punishable at Common Law, by Indictment or Action; and, if it were not known before the Trial, it will be a good Cause to set aside a Verdict. And it is enacted by 5 Ed. 3. 10. *That if any Furor in Assises, Furies, or Inquests, take of the one Party or of the other, and be thereof duly attainted, he shall not after be put in any Assises, Furies, or Inquests; and nevertheless he shall be imprisoned and ransomed, &c. And the Justices before whom such Assises, &c. pass, shall have Power to inquire, &c. according to this Statute.* And it is farther enacted, by 34 E. 3. 8. *That if any of the Parties will sue against any Furor for having taken of his Adversary, or of him, to give a Verdict, he shall be heard, and shall have his Complaint by Bill presently before the Justices, before whom they did swear, and the Furor shall answer without Delay; and if he plead to the Countrey, the Inquest shall be taken Maintenant. And if any Man, other than the Party, will sue for the King, it shall be heard, &c. as before is said. And if*
the

S. 7.

S. 8.

the Juror be attainted, at the Suit of other than the Party, and make Fine, the Party that sues shall have half the Fine; and the Parties to the Plea shall recover their Damages by the Assessment of the Inquest. And the Juror so attainted shall have one Year's Imprisonment, not to be pardoned by any Fine. And if the Party will sue by Suit before other Justices, he shall have the Suit as aforesaid. And it is farther enacted, by 38 Ed. 3. 12. That if any Jurors in Inquest, to be taken between the King and Party, or Party and Party, do any Thing take by them, or other of the Plaintiff, or Defendant, to give their Verdict, (which Words extend to a Purchase of Lands, at a Price known to be under the true Value) and thereof be attainted by Process, contained in the said Statute of 34 E. 3. be it at the Suit of the Party that will sue for himself, or for the King, or any other Person, every such Juror shall pay ten Times as much as he hath taken. And he that will sue shall have the one half and the King the other. And all the Embracers to bring or procure such Inquest to take Gain, shall be punished in the same Manner. And if the Juror, or Embracer, so attainted, have not whereof to make gree in the Manner aforesaid, he shall have one Year's Imprisonment. But no Justice shall inquire of Office upon any of the Points of this Article.

S. 11. Sect. 5. In an Action on this Statute, there is no need to set forth the whole Record of the Action in which the Money was taken; but only so much as conveys the Plaintiff to his Action: But any Variance in the first Record, from that in the Declaration,

Declaration in the *Decies tantum* is pleadable in Abatement: And it seems a good Plea in Bar, that there is no Record by which it may appear, that any Juror was sworn in the former Action.

Sect. 6. It is not enough to shew, that the Defendants took Money to embrace a Jury, without shewing also, that they actually so disposed of it: Neither is it sufficient to shew that the Juror received Money, without shewing in certain how much. S. 12.

Sect. 7. Money given to a Juror after the Verdict, is not within the Statute, if there were no precedent Contract. S. 13.

Sect. 8. It is not material whether the Jurors gave any Verdict or not; or if they gave one, whether it were true or false. S. 14.

Sect. 9. All the Jurors, and Embraceors, may be joined in one Action, notwithstanding they received several Sums, because all was received in order to give the same Verdict. But it seems, that each Defendant ought to plead severally, that he did not take any Money against the Form of the Statute. But not Guilty is no Plea. S. 15.

Sect. 10. The Plaintiff, in a *Decies tantum*, shall be paid the Moiety due to him on the Judgment, before the King, because the King's Moiety is not due as a Debt, but as a Fine. S. 16.

Sect. 11. The Husband alone may bring a *Decies tantum* for an Embracery in a former Action by him and his Wife, because S. 17.

306 Offences of Buying, Selling, &c.

cause he is only to recover Money, of which no Part belongs to the Wife.

Sect. 12. This being a popular Action may be barred by the King's Release, but not by that of the Party grieved; neither
S. 21. needs the Party grieved declare of any Damages done him by the Embracery: But if he do, it is said, that he ought to lay them severally against each Defendant. But *Quare.*

S. 22. *Sect. 13.* No Process of Outlawry lies in this Action, but only a *Capias*, or Distress infinite on a *nihil* returned: And such Distress ought to be only of the Land which the Defendant had at the Time of the Writ of *Decies tantum* purchased. And it is said, that no *Capias* lies against the Jurors into any foreign County. But *Quare.*

CHAP. LXXXVI.

Of the Offence of Buying, or Selling, a pretended Title.

Sect. 1. **I**T seems an high Offence at Common Law, as plainly tending to Oppression, for a Man to buy at an under Rate a doubtful Title, known to be disputed, to the Intent, that the Buyer may carry on the Suit, which the Seller doth not think it worth his While to do; and

and it seems not to be material, whether the Title be good or bad, or whether the Seller were in Possession or not, unless the Possession were lawful and uncontested.

Seç. 2. It is recited by 1 R. 2. 9. *That many Persons, having true Title to Lands, &c. were wrongfully delayed, by means that the Defendants did make Gifts and Feoffments of their Lands in Debate, and of their Goods to great Men, against whom the said Pursuants durst not make their Pursuits: And also, that many Persons used to disseise others, and anon to make Feoffments, sometimes to great Men, to have Maintenance; and sometimes to Persons unknown, to the Intent to delay the said Disseisees, &c. And thereupon it is enacted, That no Gift, or Feoffment of Tenements, or Goods, be made by such Fraud or Maintenance; and that if any be so made, they shall be holden for none; (viz in respect of the Disseisees; but not as to the Feoffor, or Feoffee;) and that the said Disseisees shall recover against the first Disseisor, their Lands and Damages, without having regard to such Alienations; so that they commence their Suit within a Year after the Disseisin.*

S. 3.

Seç. 3. It is farther enacted by 32 H. 8. 9. *That no Person shall bargain, buy or sell, or by any Means obtain any pretended Rights or Titles, or take, promise, grant or covenant, to have any Right or Title to any Hereditament (viz. whether Freehold or Copyhold) unless the Seller, &c. his Ancestors, or they from whom he claims, have been in Possession of the same, or of the Reversion, or Remainder thereof, or taken the Rents or Profits thereof, for one*

S. 12.

S. 13.

- whole Year next before the said Bargain and Sale, &c. on Pain, that such Seller shall forfeit the whole Value of the Hereditaments so sold, &c.*
- S. 11. (And to this End, the Action on the Statute must shew the Value at the Time of the Bargain) *and the buyer, or taker, knowing the same, shall forfeit the Value of the Hereditaments so by him Bought, or Taken. The one half of the said Forfeitures to be to the King, the other to him who will sue, &c.*

- Sect. 4. But it is provided, *That it shall be lawful for any Person, being in lawful Possession, by taking of the yearly Farm, Rents, or Profits of any Hereditaments, (or otherwise, for these Instances are put but for Examples) to buy, or get by any reasonable Means, the pretended Right or Title of any other Person to the same. And so much would have been implied if it had not been expressed.*
- S. 17.

Sect. 5. And it is farther provided, *That no one shall be charged with these Penalties, unless he be sued within one Year after the Offence.*

- S. 7. Sect. 6. It is not material, whether any Suit be depending concerning the Lands contracted for or not.

- Sect. 7. The Statute being publick, there is no need to recite it in an Action brought upon it; but if you take upon you to recite it, a material Misrecital will be fatal.
- S. 8.

- Sect. 8. In an Action against the Buyer of a pretended Title, it must expressly appear, that the Defendant knew that the Seller had not been a Year in Possession: But in such an Action by the Buyer, the Contrary must expressly appear; for other-
wise
- S. 9.

wise it may be intended, that he was *Particeps criminis*.

Sect. 9. It is not sufficient to shew, that the Seller had not been in Possession a Year before, &c. without averring, that he had a pretended Right or Title, for that is the Point of the Action. S. 10

Sect. 10: A Contract for a Lease for Years, unless fairly made to try a Title in Ejectment, is within the Statute, whether it were made off from the Land, or upon the Land, by a Person in, or out of Possession. And in an Action on the Statute for making such a Lease, there is no need to shew its Commencement, or End, because the Plaintiff is supposed to be a Stranger to it. S. 12, 13, 14

Sect. 11. No Conveyance, by one who has the uncontested Possession, and absolute undisputed Propriety of Lands, as by a Disseisor having obtained the Release of the Disseisee who had the true Right, not contested by any other Person whatsoever, or by a Mortgagor having redeemed his Lands, is within the Meaning of the Statute, because it no way favours of Maintenance and can be prejudicial to no one. Neither is a Lease, for the usual Rent, by one who recovers Lands by Virtue of an ancient Title, within the Meaning of the Statute. But if a Disseisee enter upon a Disseisor, and immediately sell the Land to any but an Heir apparent, he seems within the Statute, though he had the absolute Property and Possession of the Land, for the Intent of the Statute was, to restrain all Persons S. 15.
S. 17.

310 **Offences of Buying, Selling, &c.**

Persons from transferring any disputed Right to Strangers.

- S. 17.** *Sett. 12.* Whoever has a Reversion or Remainder vested in him, may lawfully take any Conveyance which will strengthen his Estate, but cannot take a Covenant from a Stranger for a Conveyance from him, when he shall have recovered the Land.
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An Alphabetical

INDEX

TO BOTH

BOOKS.

Abatement.

WHERE it is a good Plea that
a prior Prosecution is depending,
B. 2. C. 23. S. 76. C. 26. S.
45. C. 34. S. 1.

Where a Misnomer or Omission of the Name of
Baptism, or Surname, or Name of Dignity, or a
wrongful Addition, may be pleaded in Abate-
ment, B. 2. C. 23. S. 60, 64, 66. C. 25 S.
43.

Where an Appeal may be abated for naming J.
S. a Defendant where there is no such Per-
son, B. 2. C. 23. S. 77.

A

The

An Alphabetical Index to both Books.

The Court ex officio will in many Cases abate a Writ, as for Want of proper Words of Art, B. 2. C. 23. S. 64.

For a Variance between the Writ and Count B. 2. C. 23. S. 8, 48, 64.

For Want of proper Latin, or legal Form, B. 2. C. 23. S. 64.

For being brought by one who appears to have no Right to bring it, B. 2. C. 23. S. 25.

Where for Want of fifteen Days between the Teste and Return of the Writ, B. 2. C. 23. S. 65.

Where for Want of an Addition, B. 2. C. 23. S. 67 to 76.

Whether a Misnomer be pleadable by a Defendant coming in gratis, B. 2. C. 34. S. 3.

Whether a Plea in Abatement be pleadable after an Imparlance, B. 2. C. 23. S. 66.

What is pleadable in Abatement of an Appeal carried on at the Suit of the King, B. 2. C. 25. S. 9.

Where one may plead several Pleas in Abatement together with Matter in Bar, B. 2. C. 23. S. 78, 85, 86.

Where a Suit is abatable as to all the Defendants, and where as to one only, B. 2. C. 23. S. 77. C. 25. S. 43.

Whether Pleas in Abatement found against a Defendant are peremptory, B. 2. C. 23. S. 78.

What is to be done with a Defendant, where a Suit against him abates, B. 2. C. 23. S. 1. C. 34. S. 2.

Demurrer in Abatement, B. 2. C. 31. S. 5.

An Alphabetical Index to both Books.

Abettors. See Accessory and Appeal.

Abjuration, B. 2. C. 9. S. 23. C. 33. S. 2.

Abjuration Oath, B. 1. C. 24. S. 4.

Abortion.

Where it is Murder to cause it, B. 1. C. 31.

S. 5.

Accessory.

No Accessory in High Treason or Trespass,

B. 1. C. 17. S. 23. C. 20. S. 2, 3. B. 2. C.

17. C. 18. S. 11. C. 21. S. 3. C. 29. S. 2, 3.

Whether there may be Accessories in Petit Treason, Felony, Præmunire, and Mayhem,

B. 1. C. 32. S. 5, 7. B. 2. C. 23. S. 7. 49.

C. 29. S. 2, 3. C. 17.

Whether there can be Accessories to Manslaughter or Homicide per infortunium, &c.

B. 1. C. 30. S. 1. B. 2. C. 29. S. 15.

Accessories to Piracy how punished, B. 1. C. 37. S. 3, 8.

Where Abettors shall be esteemed Principals, and how to be indicted, &c. B. 1. C. 1. S. 4.

C. 30. S. 3. C. 31. S. 7, 18. C. 34. S. 3.

C. 38. S. 6. C. 41. S. 4. C. 64. S. 11.

B. 2. C. 23. S. 49. C. 29. S. 4, 10. C. 46.

S. 32, 33.

Where Persons absent may be Principals, B. 2.

C. 29. S. 5, 6.

Where Accessories to a forcible Marriage are deemed Principals, B. 1. C. 42. S. 1, 2, 6.

B. 2. C. 29. S. 6.

An Alphabetical Index to both Books.

Who shall be deemed Accessories before, B. 2. C. 29. S. 9. 11, 12, 13.

Who shall be deemed Accessories after, B. 2. C. 29. S. 16, 17, 18, 19, 20.

Whether the same Construction in Relation to Principal and Accessory shall be made as to Offences by Common Law, and Offences by Statute, B. 1. C. 32. S. 5. C. 40. S. 3. B. 2. C. 29. S. 7.

The Offence of the Accessory cannot rise higher than that of the Principal, B. 1. C. 32. S. 6. B. 2. C. 29. S. 8.

Whether one may be both Principal and Accessory, B. 2. C. 29. S. 1.

Whether one may be Accessory to an Accessory, B. 2. C. 29. S. 1.

Accessories where bailable, B. 2. C. 15. S. 16, 26.

Where the Accessory shall be discharged on the Acquittal of the Principal, B. 2. C. 29. S. 21.

The Attainder of the Accessory reversed by reversing that of the Principal, B. 2. C. 2. S. 22.

Whether the Accessory shall recover Damages on the Acquittal of the Principal, B. 2. C. 23. S. 90.

Whether the Acquittal of a Man as Principal bars a Prosecution against him as Accessory, &c. B. 2. C. 35. S. 10.

One attainted as a Principal in one Felony may be prosecuted for another in order to try an Accessory, B. 2. C. 36. S. 6.

Whether a Statute excluding the Principal from Clergy exclude the Accessories, B. 2. C. 33. S. 14.

An Alphabetical Index to both Books.

Accessories where excluded from Clergy in Petit Treason, (B. 2. C. 33. S. 35.) in Murder, (B. 2. C. 33. S. 31.) in Larceny, (B. 2. C. 33. S. 38 to 44.) in Sacrilege, (B. 2. C. 33. S. 44 to 47. in Robbery, (B. 2. C. 33. S. 54 to 67.) in Burglary, (B. 2. C. 33. S. 67.) in Arson, (B. 2. C. 33. S. 68.)

Principal and Accessory how to be tried where the Offence of both are in the same County, B. 2. C. 29. S. 23, 24, 25, 26, 27.

In what manner they are to be tried, where their Offences are in different Counties, B. 2. C. 29. S. 28. &c.

How an Accessory is to be Outlawed, B. 2. C. 27. S. 66, 67.

Accord with Satisfaction.

Where pleadable to an Appeal, B. 2. C. 23. S. 11.

Accounts.

By Surveyors of the Highways, B. 1. C. 76. S. 28.

By Collectors of Taxes for Bridges. B. 1. C. 77. S. 7.

Acquittal. See Autrefoits acquit.

Where a Bar to a subsequent Information, B. 2. C. 26. S. 46.

Whether a Man can have an Action for a Conspiracy, &c. before he be acquitted, B. 1. C. 71. S. 2.

An Alphabetical Index to both Books,

Where the Acquittal of all but one is the Acquittal of the one, B. 1. C. 72. S. 6.

What such an Acquittal as intitles to Damages in Appeal, B. 2. C. 23. S. 87, &c.

Act of God.

May change a Highway, B. 1. C. 76. S. 3.

Addition.

Where a Writ or Indictment is abatable for Want of it, B. 2. C. 23. S. 67 to 72. C. 25. S. 43.

General Rules concerning Additions, B. 2. C. 23. S. 69 to 72. C. 25. S. 43.

What a good Addition as to Estate or Degree, (B. 2. C. 23. S. 72.) as to Mystery, (B. 2. C. 23. S. 73.) as to Place, (B. 2. C. 23. S. 74.)

Defective Addition how salved, B. 2. C. 23. S. 75.

Adjournment.

Where a Commission is determined for Want of it, B. 2. C. 5. S. 7.

What a good Adjournment, B. 2. C. 5. S. 11, 12.

Whether there can be an Adjournment on the Trial of a Peer, B. 2. C. 44. S. 15.

Admiralty.

Where Præmunire to sue there, B. 1. C. 19. S. 4.

An Alphabetical Index to both Books.

Its Power as to Piracy, B. 1. C. 37.

Ad quod damnum, B. 1. C. 76. S. 3. and
21.

Adtunc & ibidem, B. 1. C. 64. S. 22. B. 2.
C. 23. S. 58. C. 25. S. 50.

Advice.

Where it makes a Man Accessory to Felony.

B. 2. C. 29. S. 9 to 14.

In what other Cases criminal, B. 1. C. 22.
S. 11. C. 33. S. 6.

Advowson. See *Presentation.*

Affeerment, B. 2. C. 10. S. 7, 13.

Affrays.

What an Affray in pais, and how to be prevented and suppressed, &c. B. 1. C. 60. S.
1. C. 63. B. 2. C. 10. S. 25. C. 13. S. 6.
C. 14. S. 1.

Affrays in Courts of Record, how punished,
B. 1. C. 21. S. 2, 3, 4, 7. B. 2. C. 1. S. 6.

Agnus Dei, B. 1. C. 19. S. 9.

Aiding and Assisting.

*How far necessary to be laid in an Indictment,
or found in a Verdict*, B. 1. C. 17. S. 15.
B. 2. C. 29. S. 10.

An Alphabetical Index to both Books,

Alehouses.

How suppressed and licensed, &c. B. 1. C. 78.
S. 6, &c.

Alias dictus, B. 2. C. 25. S. 43. C. 27.
S. 65.

Alien.

How indictable for Treason, B. 1. C. 17.
S. 3.

May import Victuals, B. 1. C. 80. S. 3.

May have his Clergy, B. 2. C. 33. S. 2.

Whether he can be a Juror, B. 2. C. 43. S. 7.

By what Jury to be tried, B. 2. C. 43. S.
23, &c.

May demand Sureties of the Peace, B. 1. C.
60. S. 2.

Allegiance. See Oaths and Toru,

Allum, B. 1. C. 79. S. 7, 8.

Amendment.

Appeals and Indictments where amendable, B.
2. C. 23. S. 79. C. 25. S. 62, 63.

*Informations in Nature of quo warranto with-
in the Statutes of Amendments,* B. 2. C. 26.
S. 12,

Amercement.

*Where a Vill, &c. may be amerced for the E-
scape of a Murderer,* B. 1. C. 29. S. 6. B.
2. C. 12. S. 1.

Where

An Alphabetical Index to both Books.

Where for suffering a Body to lie to Putrefaction, B. 2. C. 9. S. 10.

Where an Amercement may be set by the Torn or Leet, and how to be affeered and recovered, B. 2. C. 10. S. 6 to 14.

Amicus curiæ, B. 2. C. 48. S. 17.

Anglice, B. 2. C. 25. S. 55.

Annum, Diem, Vastum, B. 2. C. 49. S. 6.

Apothecary.

No Recusant ought to be an Apothecary, B. 1. C. 10. S. 25.

Apothecaries privileged from being Constables, B. 2. C. 13. S. 20.

Appeals.

Appeals from Orders and Inquests relating to the Highways where to be made, B. 1. C. 76. S. 21, 51.

Appeals to Rome, Præmunire, B. 1. C. 19. S. 3, 5.

Appeals by Bill in what Courts to be brought, B. 2. C. 9. S. 18, 19, 20, 21, 22. C. 23. S. 1 to 5.

Appeals before the Constable and Marshal, B. 2. C. 4. S. 3. &c. C. 23. S. 4.

Appeals in Parliament, B. 2. C. 4. S. 5, &c. C. 23. S. 13.

Appeals of Mayhem how to be brought, and how barred and tried, &c. B. 2. C. 23. S. 5 to 13.

Appeals of Treason, B. 2. C. 4. S. 13

Appeals of Felony by whom to be brought, B. 2. C. 23. S. 14 to 17.

Appellee

An Alphabetical Index to both Books.

- Appellee of Felony standing Mute, how to be dealt with, B. 2. C. 30. S. 4.*
Appeals of Death within what Time to be brought, B. 2. C. 23. S. 17.
Within what County, B. 2. C. 31. S. 3, 4. B. 2. C. 23. S. 18.
Appeals of Death by a Wife, B. 2. C. 23. S. 36, 37, 38.
By an Heir, B. 2. C. 23. S. 22 to 27.
Appeals of Larceny by whom to be brought, B. 2. C. 23. S. 27, 28.
In what County, B. 2. C. 23. S. 29.
Within what Time, B. 2. C. 23. S. 30.
Where the Appellant shall have Restitution of the Goods stolen from him, B. 2. C. 23. S. 31 to 36.
Appeal of Rape, B. 2. C. 23. S. 36 to 47.
Whether there may be an Attorney in Appeals, B. 2. C. 23. S. 47, 98.
The Count must pursue the Writ, B. 2. C. 23. S. 48.
How it must charge Abettors, B. 2. C. 23. S. 49.
The Omission of Words of Art is fatal, B. 2. C. 23. S. 50.
Appeals de morte, &c. ignoti are not good, but Indictments are, B. 2. C. 23. S. 51. C. 25. S. 44.
With what Certainty the Manner of the Fact must be specially set forth, B. 2. C. 23. S. 52 to 56.
How the Year, Day and Place are to be set forth, B. 2. C. 23. S. 56 to 62.
Whether there must be one Count against all the Offenders, B. 2. C. 23. S. 62.

An Alphabetical Index to both Books.

How the Appelles shall be arraigned, B. 2. C. 28.

Where the Appellant shall be nonsuited, B. 2. C. 23. S. 63.

Where the Writ shall be abated by the Court ex officio, B. 2. C. 23. S. 64.

Where on an Exception for Want of fifteen Days in the Writ, B. 2. C. 23. S. 65.

Where for a Misnomer, B. 2. C. 23. S. 66.

Where for Want of an Addition, B. 2. C. 23. S. 67 to 72.

What is a good Addition, B. 2. C. 23. S. 72 to 75.

The Effect of an Addition how salved, B. 2. C. 23. S. 75.

Another Appeal depending where pleadable, B. 2. C. 23. S. 76.

Whether a good Plea that there is no such Person as one of the Defendants, B. 2. C. 23. S. 77.

Where several Pleas may be pleaded in Appeals, B. 2. C. 23. S. 78.

What Faults are amendable in an Appeal, B. 2. C. 23. S. 79.

Pleas in Bar shewing that the Plaintiff hath no Title to his Appeal, B. 2. C. 23. S. 80.

Whether a Retraxit, Nonsuit, Discontinuance or Abatement of one Appeal be a Bar to another, B. 2. C. 23. S. 81.

Where an Acquittal or Attainder on one Appeal, &c. is a Bar to another, B. 2. C. 23. S. 82. C. 35, 36.

Where a Release will Bar an Appeal, B. 2. C. 23. S. 83.

A Nonsuit as to one Defendant, is a Nonsuit as to all, not so a Release, &c. B. 2. C. 23. S. 84.

What

An Alphabetical Index to both Books.

What Pleas may be pleaded together without the general Issue, B. 2. C. 23. S. 78, 85, 86.

In what Cases, and how, and against whom Damages may be recovered for a malicious Appeal, B. 2. C. 23. S. 87 to 100.

Where the Appellant is to be fined or amerced, B. 2. C. 23. S. 100.

Whether the Appellee may have Counsel, B. 2. C. 39. S. 1.

Appearance.

What Defects are salved by it, B. 2. C. 23. S. 65, 75. C. 27. S. 55, 56. C. 35. S. 7.

Apples.

Lawful to ingross them, B. 1. C. 80. S. 10.

Apprentice.

Not within 12 Annæ concerning Larceny, B. 2. C. 33. S. 41.

Approver.

The Meaning of the Word, B. 2. C. 24. S. 1.

Who may be Approvers, B. 2. C. 24. S. 2.

In what Cases, B. 2. C. 24. S. 3.

Of what Crimes, B. 2. C. 24. S. 4.

Of what Persons, B. 2. C. 24. S. 5.

Before what Court, B. 2. C. 9. S. 22. C. 24. S. 6.

How the Approver is to be ordered and rewarded, &c. B. 2. C. 24. S. 7, 9, 11, 12.

What

An Alphabetical Index to both Books:

What Proceſs is to go againſt the Appellee,
B. 2. C. 24. S. 8.

The Danger of procuring a Pardon for an Approver, B. 2. C. 24. S. 12.

The Power of a Coroner as to Appeals by Approvers, B. 2. C. 9. S. 22.

Whether an Approver be bailable, B. 2. C. 15. S. 23.

Felony in a Gaoler to compel a Priſoner to become an Appellor, B. 1. C. 51.

Arbitrament.

Whether a good Bar of an Appeal, B. 2. C. 23. S. 11.

Argument.

Will not ſupply the Want of an expreſs Allegation, B. 2. C. 23. S. 53. C. 29. S. 31.

Armour.

Wearing Armour in terrorem populi where Criminal, and how to be proceeded againſt,
B. 1. C. 63. S. 3 to 8. C. 64. S. 2.

Arms.

Not to be kept by Papiſts, B. 1. C. 12. S. 11. C. 14. S. 4.

Diſputes concerning them, where determinable,
B. 2. C. 4. S. 4, &c.

Ar-

An Alphabetical Index to both Books;

Arraignment.

Whether a Man shall be arraigned upon an Indictment, while an Appeal is depending, B. 2. C. 25. S. 15.

In what Language, and in what manner a Prisoner is to be arraigned, B. 2. C. 28. S. 1, to 4.

Where the Omission of it is Error, B. 2. C. 28. S. 5.

Where one may be arraigned on several Indictments, &c. B. 2. C. 28. S. 6.

Where on a Count in Appeal after a Nonsuit, B. 2. C. 25. S. 7.

How far it is necessary, that the Principal be attainted before the Accessory shall be arraigned, B. 2. C. 29. S. 15, 21 to 28.

Arrest. See Parol and Warrant.

Where private Persons are punishable for not arresting Offenders, (B. 1. C. 63. S. 9. B. 2. C. 12. S. 1 to 5.) or for hindring an Arrest, B. 2. C. 17.

Where and in what manner such Persons can justify the Arresting an Offender whom they are not bound to arrest, B. 1. C. 63. S. 8. B. 2. C. 12. S. 5 to 9.

How such Persons are to be rewarded for apprehending Highway-men, Counterfeiters of the Coin, Shoplifters, Burglars, &c. B. 2. C. 12. S. 9, &c.

Arrests by Watchmen, where lawful, B. 2. C. 13. S. 2 to 5.

Ar-

An Alphabetical Index to both Books.

Arrests by Constables, B. 1. C. 63. S. 10, to
13. B. 2. C. 13. S. 5 to 9.

By Bailiffs of Towns, B. 2. C. 13. S. 9.

By Justices of Peace, B. 1. C. 63. S. 18. B. 2.
C. 13. S. 10, &c.

*Where Doors may be broken open to make an
Arrest*, B. 1. C. 63. S. 11. B. 2. C. 14.

*Where the Arrest of a Suitor may be discharged
by the Court*, B. 2. C. 1. S. 8.

*What is such an Arrest as makes the Officer
liable to an Escape*, B. 2. C. 19. S. 1.

*Where it is lawful to kill a Man who resists or
flies from an Arrest*, B. 1. C. 28. S. 6, 7,
12.

Where Rioters may be arrested, B. 1. C. 65.
S. 11, &c.

Arrest of Judgment.

*May be moved by one who has confessed an In-
dictment*, B. 2. C. 31. S. 3.

*For what Faults Judgment shall not be ar-
rested in High Treason*, B. 2. C. 25. S. 90.

Arson.

Where Felony, and how indictable, &c. B. 1.
C. 39.

What shall make a Man an Accessory in it, B.
2. C. 29. S. 11, 13.

Whether excluded from Clergy, B. 2. C. 33. S.
25, 68.

Whether bailable, B. 2. C. 15. S. 24.

Asportavit, B. 1. C. 33. S. 11. C. 34. S. 4, 8.

Assault.

An Alphabetical Index to both Books

Affault.

What shall be said to be an Affault, B. 1. C. 62. S. 1.

Where it may be justified, B. 1. C. 60. S. 16. C. 64. S. 1.

What Affault not inquirable in a Leet, B. 2. C. 10. S. 25.

Assembly.

Unlawful, B. 1. C. 65. S. 9, 10. See Riot.

Assent.

Where it makes a Man an Accessory, B. 2. C. 29. S. 2, 4, 9.

Assise.

The Power of Justices of Assise as to criminal Matters, B. 2. C. 6. S. 5. C. 7. S. 1 to 11. No one shall be a Justice of Assise in his own County, B. 2. C. 7. S. 11.

Association.

For Commissions of Association, B. 2. C. 5. S. 13, 14, 15.

Attachment.

The Manner of proceeding by way of Attachment, B. 2. C. 22. S. 1.

Attachments against Sheriffs and Bailiffs, B. 2. C. 22. S. 2 to 6.

Against

An Alphabetical Index to both Books.

Against Attornies, B. 2. C. 22. S. 6 to 10.

Against Furors, B. 2. C. 22. S. 10 to 14.

Against inferior Judges, B. 2. C. 22. S. 14 to 17.

Against Counsellors, B. 2. C. 22. S. 17.

Against Gaolers, B. 2. C. 22. S. 18, 19.

Against Peers, &c. B. 2. C. 22. S. 20.

For Contempts of Writs, B. 2. C. 22. S. 20.

For Contempts in the Face of the Court, B. 2. C. 22. S. 21, 22.

For Contempts of Rules of Courts, B. 2. C. 22. S. 23, 24.

For Abuses of Process, B. 2. C. 22. S. 24, 25.

Attainder.

Persons attainted not to be put to Death without due Authority, B. 1. C. 28. S. 3. C. 31. S. 20.

Not to be Approvers, not Appellants, B. 2. C. 23. S. 16. C. 24. S. 2.

Are liable to personal Actions, B. 2. C. 36. S. 5.

Where bailable, B. 2. C. 15. S. 23, 38.

How to be dealt with when they stand Mute, B. 2. C. 30. S. 3.

Ought not to be admitted to make Purgation, B. 2. C. 33. S. 80.

To what Purposes looked upon as dead Persons, B. 2. C. 49. S. 36, 37.

The Identity of their Persons how to be tried, B. 2. C. 50. S. 2.

They may demand Sureties of the Peace, B. 1. C. 60. S. 2.

An Alphabetical Index to both Books.

Attainder of Piracy corrupts not the Blood,
B. 1. C. 37. S. 3.

*See Corruption, Autrefoits acquit, attaint and
convict, Judgment.*

Attorney.

*In what Cases he may lawfully maintain a
Suit,* B. 1. C. 81. S. 2. C. 83. S. 21 to
25.

*Where and in what Manner punishable for
Male Practice,* B. 1. C. 83. S. 21 to 25. B.
2. C. 22. S. 6 to 10.

Is privileged from being a Constable, B. 2. C.
10. S. 16.

*Whether in a Qui tam the Parties may appear
by Attorney,* B. 2. C. 26. S. 38, 39, 40.

Whether in Appeals, B. 2. C. 23. S. 12. 47.

Whether on an Attachment, B. 2. C. 22. S. 1.

Averment. See Record.

*Where it helps a Variance between a Record of
Conviction, and a subsequent Indictment or
Pardon, &c. and how the Truth of it is to be
tried,* B. 2. C. 35. S. 3, 4. C. 37. S. 45.

Autrefoits acquit, attaint or convict.

Autrefoits acquit where a good Plea, B. 2. C.
35. S. 1, 5, 6, &c.

Whether it requires a Profert, B. 2. C. 35.
S. 2.

*A Variance between the Record of Acquittal,
and the Indictment to which it is pleaded,
how helped,* B. 2. C. 35. S. 3, 4.

Whether a Judgment for a Defendant on a Plea

An Alphabetical Index to both Books.

in Bar, or Demurrer, be pleadable to a subsequent Prosecution, B. 2. C. 35. S. 6.

The Record of Acquittal must be free from Error, B. 2. C. 35. S. 7.

And on a Suit by one who had Right to bring it, B. 2. C. 35. S. 8.

And in a Court that had a Jurisdiction, B. 2. C. 35. S. 9.

Whether an Acquittal of a Man as Principal bar a Prosecution against him as Accessory, &c. B. 2. C. 35. S. 10.

An Acquittal on an Indictment no Bar at this Day to an Appeal, B. 1. C. 35. S. 11.

Autrefoits attaint, or convict, where a good Plea to an Indictment, or qui tam, &c. B. 2. C. 36. C. 26. S. 46

How the Plea of Autrefoits convict of Manslaughter, &c. shall conclude, B. 2. C. 36. S. 11.

Badger.

NOW to be licensed, B. 1. C. 80. S. 26 to 30.

Bail. See Recognisance.

Where a Prisoner is to be bailed or committed, and where to be discharged, B. 2. C. 15. S. 1.

The Difference between Bail and Mainprise, B. 2. C. 15. S. 2.

What shall be esteemed sufficient Bail, B. 2. C. 15. S. 3.

The Taking insufficient Bail, (B. 2. C. 15. S. 4.) or bailing Persons not bailable, (B. 2. C. 15.

An Alphabetical Index to both Books

C. 15. S. 5, 6.) or denying Bail where it ought to be granted, now punishable, B. 2. C. 15. S. 7, 8.

In what manner Bail is demandable, &c. by the Habeas Corpus Act, B. 2. C. 15. S. 9 to 14.

Where Bail is grantable by the Sheriff ex officio, B. 2. C. 15. S. 14.

Where on Writs of Mainprise homine replegiando, &c. B. 2. C. 15. S. 15, &c.

Whether for excusable Homicide, B. 1. C. 29. S. 7.

Whether for a dangerous Wound, B. 1. C. 63. S. 13.

The Directions given by Westm. 1. concerning Bail, &c. B. 2. C. 15. S. 16.

The Construction thereof as to Persons taken for Homicide, (B. 2. C. 15. S. 17.) as to those taken by the Command of the King, B. 2. C. 15. S. 18.) or of his Justices, (B. 2. C. 15. S. 19.) or for the Forest, (B. 2. C. 15. S. 20, 21, 22.) As to notorious Offenders, (B. 2. C. 15. S. 23, 25.) As to Persons taken for Treason, Arson and other heinous Offences, (B. 2. C. 15. S. 24.) As to Persons indicted of Larceny, (B. 2. C. 15. S. 25.) As to Accessories, B. 2. C. 15. S. 26.

Where Bail is grantable by Justices of Peace, B. 2. C. 15. S. 27 to 32.

Where by Justices of Gaol-Delivery, B. 2. C. 15. S. 32.

Where by the King's Bench to Persons committed by the Council, (B. 2. C. 15. S. 33, 34.) or by Parliament, (B. 2. C. 15. S. 35.) or by Chancery, B. 2. C. 15. S. 36.) or by inferior Courts, (B. 2. C. 15. S. 37.) And to Persons

An Alphabetical Index to both Books.

sons irreplevisable by Westm. 1. B. 2. C. 15. S. 38.

Where Bail is grantable by other Courts of Westminster-Hall, B. 2. C. 15. S. 39.

In what Form it is to be taken, B. 2. C. 15. S. 40.

What shall forfeit the Recognisance, B. 2. C. 15. S. 41.

Whether a Man's Bail may maintain him in the Action, B. 1. C. 83. S. 12.

Whether the Bailing a Person notailable amounts to an Escape, B. 2. C. 19. S. 5.

The Danger of personating another in putting in of Bail, B. 1. C. 45. S. 6, 7.

Bailiff.

Where liable to an Attachment, B. 2. C. 22. S. 2, 3, 4.

Where he must shew his Warrant, B. 2. C. 13. S. 12.

How punishable by Justices of Assise, B. 2. C. 7. S. 9.

Can't distrain for an Amercement in a Leet without a Warrant, B. 2. C. 10. S. 11.

Where it is Murder to kill him, B. 1. C. 31. S. 18, 19.

Bailiffs of Towns.

To make Inquiry of Strangers and Hosts, &c. B. 2. C. 13. S. 2.

An Alphabetical Index to both Books.

Banishment.

Not to be inflicted but by Act of Parliament,
B. 2. C. 48. S. 10.

Bank-Notes.

Felony to Counterfeit them, B. 1. C. 58. S. 1.

Bankrupts.

Where guilty of Felony, B. 1. B. 57.

Baptism.

Forfeiture for a Popish Baptism, B. 1. C. 12.
S. 16.

Bar.

*Where a Plea in Bar may be pleaded with a
Plea in Abatement,* B. 2. C. 23. S. 78.

What are good Bars in Appeal, B. 2. C. 23. S.
80 to 87.

*Where several Matters are pleadable together in
Bar,* B. 2. C. 23. S. 85, 86.

Baronet.

*Whether a Writ shall abate on the Plain-
tiff's being made a Baronet,* B. 2. C. 23.
S. 67.

*Good Plea in Abatement, that a Baronet is not
so named,* B. 2. C. 25. S. 43.

An Alphabetical Index to both Books.

A Return to a Certiorari is naught, which varies from it in the Omission of such Addition, B. 2. C. 27. S. 48.

Barratry.

How indicted, B. 1. C. 81. S. 4. B. 2. C. 25. S. 39.

Bastard.

*May have his Clergy, B. 2. C. 33. S. 2.
What good Evidence of the Murder of a Bastard, and how the Indictment is to be drawn, B. 2. C. 46. S. 36.*

Battery. See Son Assault Demefne.

One may be found guilty of an Assault, and acquitted of the Battery, B. 1. C. 52. S. 1.

*What amounts to a Battery, B. 1. C. 62. S. 2.
What Batteries are justifiable, B. 1. C. 60. S. 16.*

Battle.

*In what Cases there shall be a Trial by Battle, B. 2. C. 45. S. 1.
The Solemnity of such Trial, B. 2. C. 45. S. 2.*

Bawdy-Houses, B. 1. C. 74.

Haunters of them to be arrested by the Constable, B. 2. C. 10. S. 14.

An Alphabetical Index to both Books.
To be bound to the good Behaviour, B. 1. C.
61. S. 2.

Beef and Beer.

How exported, B. 1. C. 80. S. 21, 22.

Behaviour.

*Surety for the good Behaviour for what Causes
grantable, and where forfeited, B. 1. C. 21.
S. 6. C. 61.*

Bigamy.

Where Felony, &c. B. 1. C. 43.

Bill of Appeal.

*In what Court it may be brought, B. 2. C. 23.
S. 1 to 5.*

Bill of Exceptions. See *Exceptions.*

Bishop.

*Whether he have a Right to be tried by the
Peers, B. 2. C. 44. S. 9.*

*Premunire not to obey the King's Letter for the
Election of a Bishop, B. 1. C. 19. S. 7.*

Black-Mail.

Felony to give or take it, B. 1. C. 56.

Blank

An Alphabetical Index to both Books.

Blank Warrant, B. 2. C. 22. S. 3.

Blasphemy, B. 1. C. 5. S. 1, 2.

Bona & Catalla, B. 2. C. 25. S. 47.

Bond. See chose in Action.

Books.

Search for Popish Books, &c. B. 1. C. 12. S. 18, 21. C. 15. S. 12.

Borders.

Trespasses on them, where Felonies, B. 1. C. 56.

Breaking.

The Offence of breaking Prison at Common Law.
B. 2. C. 18. S. 1.

*What a Prison within the Statute de frangenti-
bus prisonam*, B. 2. C. 18. S. 3.

What an Imprisonment, B. 2. C. 18. S. 4.

What a Breaking, B. 2. C. 18. S. 5, 6, 7.

What a Crime, B. 2. C. 18. S. 8 to 13.

What ought to be the Form of the Indictment,
B. 2. C. 18. S. 13.

*What such a Breaking as satisfies the Word
Fregit in an Indictment of Burglary*, (B. 1.
C. 38. S. 2, 3, 4. or on the Statutes which
oust

An Alphabetical Index to both Books.
*oust felonious Breakers of Houses of their
Clergy, B. 2. C. 33. S. 57.*

Bribery, B. 1. C. 67.

Bridges.

*How repaired at Common Law, B. 1. C. 77.
S. 1.*

By whom, B. 1. C. 77. S. 2.

*Whether any one Defendant be liable to the
whole Fine, and how he shall have Contri-
bution, B. 1. C. 77. S. 3.*

*The Attorney General may take a Traverse on
a Traverse, B. 1. C. 77. S. 3.*

*An Inhabitant of the County may be a Witness,
B. 1. C. 77. S. 4.*

*How Bridges are to be repaired by Justices of
Peace in Pursuance of 22 H. 8. and 1 Ann.
and who are taxable by them, and in what
Manner, &c. B. 1. C. 77. S. 5, &c.*

Buggery, B. 1. C. 4.

Bullion. See Coin, Money, and Silver.

Bulls.

*Putting in Use Popish Bulls High Treason,
(B. 1. C. 17. S. 39.) and Premunire, B. 1.
C. 19. S. 1, 2.*

Burgh.

An Alphabetical Index to both Books.

Burgh.

What a good Jury for a Trial in a Burgh, B.
2. C. 43. S. 8, 9, 13, 15.

Burglary.

What is Burglary, B. 1. C. 38. S. 1.

*What Evidence satisfies the Word noctanter
in an Indictment of Burglary, B. 1. C. 38.*
S. 2.

*What satisfies the Words felonice & burglariter
fregit & intravit, B. 1. C. 38. S. 3.*

*Whether the Words domus mansionalis be neces-
sary in the Indictment, and what satisfies
the Import of them, B. 1. C. 38. S. 7 to*
11.

*What Evidence is sufficient to shew the Intenti-
on to commit Felony, which must be laid in
every such Indictment, B. 1. C. 38. S. 11.*

The Reward for apprehending a Burglar, B. 2.
C. 12. S. 12.

*Burglary ousted of Clergy, B. 2. C. 33. S. 29,
30, 50, 51, 52, 53, 55 to 68.*

*Where a Burglar is intitled to a Pardon on
discovering others, B. 2. C. 37. S. 5, 6.*

Burial.

Forfeiture for a Popish Burial, B. 1. C. 12.
S. 17.

Burning in the Hand.

*Where to be inflicted, and the Effect of it,
and of a Pardon of it, B. 2. C. 33. S. 81 to*
88. C. 37. S. 36. *Whe-*

*An Alphabetical Index to both Books,
Whether the King can pardon it on a Convic-
tion on an Appeal, B. 2. C. 37. S. 28.*

Busbes.

*To be removed from Highways, B. 1. C. 76. S.
35. See Highways.*

Butter.

*Butter and Cheese by whom to be retailed, B.
1. C. 80. S. 5.*

*To be freely brought to London, &c. B. 1. C.
80. S. 20.*

To be freely exported, B. 1. C. 80. S. 21.

Butler.

Where guilty of Larceny, B. 1. C. 33. S. 8.

Candles.

T *O be freely exported, B. 1. C. 80. S. 21,*

Canon Law,

How far in Force here, B. 2. C. 33. S. 73.

Capias.

*For what Crimes to be awarded, and where an
alias & pluries shall go, B. 2. C. 27. S. 5,
6, 7, 8.*

*In what Manner to be awarded in Order to an
Outlawry, B. 2. C. 27. S. 58, &c.*

Where

An Alphabetical Index to both Books:

Where Doors may be broken open in order to execute a Capias, B. 2. C. 14. S. 1.

Capitage. B. 2. C. 11. S. 2.

Caption.

The Form of the Caption of an Indictment of forcible Entry, B. 1. C. 64. S. 19.

How the Caption of an Indictment must shew the Jurisdiction of the Court, and the Time and Place, when and where it was taken, B. 2. C. 10. S. 2. C. 25. S. 75 to 81.

The Form of the Caption of an Indictment at the Leet, B. 2. C. 11. S. 5, 6. C. 25. S. 76, 77.

Carriages. See Waggon.

Whether liable to be pressed by Purveyors, B. 1. C. 47. S. 2.

How the Owners of them are chargeable to the Repairs of the Highways, B. 1. C. 76. S. 8 to 20.

Carriers.

Where guilty of Larceny, B. 1. C. 33. S. 3.

How punishable for travelling with more Horses, &c. than the Statute allows, B. 1. C. 76. S. 38 to 42.

How to be licensed to buy Cattle, B. 1. C. 80. S. 26 to 30.

Castration. B. 1. C. 44. S. 1.

Casual

An Alphabetical Index to both Books.

Casual Death. B. 1. C. 26.

Cattle.

Where it is Felony to destroy them, and how the Offender is to be proceeded against, B. 1. C. 46.

Where unlawful to buy them to sell again, B. 1. C. 80. S. 17.

Lawful to reserve them on a Lease, B. 1. C. 80. S. 30.

Cepit.

The Import of the Word Cepit, B. 1. C. 33. S. 2. C 34. S. 2, 3.

Its Necessity in all Appeals and Indictments of Larceny, B. 2. C. 23. S. 50. C. 25. S. 36.

Certainty. See *Indictment and Appeal.*

What Certainty is required in Appeals, Indictments and Informations, B. 2. C. 23. S. 49 to 62. C. 25. S. 37 to 53. C. 26. S. 3.

Certificate. See *Return.*

Refusal of the Oaths how to be certified, B. 1. C. 19. S. 11, &c.

How a Conviction, &c. is to be certified in order to oust the Party from having his Clergy a second Time, B. 2. C. 33. S. 7, 8, 9.

How the Conviction of a Principal is to be certified in order to proceed against the Accessory, B. 2. C. 29. S. 30, &c.

The

An Alphabetical Index to both Books.

The Issue of n'unes accouple in loyal Matrimony triable by the Bishops Certificate,
B. 2. C. 23. S. 19, 39.

Certiorari.

To what Courts a Certiorari shall go, B. 2. C. 27. S. 11.

Where it is grantable of Right, and where in Discretion, B. 2. C. 27. S. 12.

Where the Filing of a Return to a Certiorari may be staid, B. 2. C. 27. S. 13.

Certiorari for the Removal of a Prisoner or Recognisance by whom to be signed, B. 2. C. 27. S. 14.

Certiorari for an Indictment at a Sessions of the Peace how to be granted, B. 2. C. 27. S. 15.

Indictments, &c. concerning Highways, &c. (B. 1. C. 76. S. 48, 49. B. 2. C. 27. S. 16.) *And Proceedings before Justices of the Peace concerning Tithes,* (B. 2. C. 27. S. 17.) *Or the Excise,* (B. 2. C. 27. S. 18.) *Whether removable by Certiorari.*

The Fiat for a Certiorari by whom to be signed, B. 2. C. 27. S. 19.

To what Persons a Certiorari is to be directed, B. 2. C. 27. S. 20.

Where a Record may be brought into a superior Court without a Certiorari, B. 2. C. 27. S. 21.

What Recognisance must be given before a Certiorari is to be allowed for the Removal of Indictments from the Sessions of the Peace, B. 2. C. 27. S. 22 to 36.

How

An Alphabetical Index to both Books;

How far, and in what Cases a Certiorari shall be a Superfedeas to the Court below; B. 1. C. 64. S. 39. B. 2. C. 27. S. 28, 36, 37, 38, 39.

Where such Court is in Contempt for not obeying it, B. 2. C. 22. S. 16. C. 27. S. 26, 39.

In what Manner a Return to a Certiorari is to be made, B. 2. C. 27. S. 40 to 46.

What is such a Variance between a Certiorari and the Return to it as prevents the Removal of the Record; B. 2. C. 27. S. 46, 47, 48.

What is to be done where the Record is not removed, B. 2. C. 27. S. 49.

What is to be done where it is removed, B. 2. C. 27. S. 50.

Challenge.

The Offence of sending a Challenge, B. 2. C. 63. C. 73. S. 10.

Challenge of Jurors, B. 2. C. 43. See Jurors.

Champerty. B. 1. C. 84.

Chancery.

Persons committed by it, whether bailable, B. 2. C. 15. S. 36.

Where Suitors there have been holden to be in Danger of a Premunire, B. 1. C. 19. S. 4.

Cheats.

What a Cheat at Common Law, and how punished, B. 1. C. 71. S. 2.

Getting

An Alphabetical Index to both Books:

Getting Money by false Tokens, how punished by Statute, B. 1. C. 71. S. 3, 4.

Whether notorious Cheats may be arrested by private Persons, B. 2. C. 12. S. 8.

Cheese. See Butter.

Chief Pledge, B. 2. C. 10. S. 14.

Chose in Action.

The King may sue a Bond forfeited to him, B. 1. C. 10. S. 8.

No Larceny to take the Paper that contains it, B. 1. C. 33. S. 6, 14.

An Assignee may lawfully sue for it, B. 1. C. 83. S. 11.

Church.

Seditious Words against it, indictable, B. 1. C. 5. S. 5.

Absence from it on any Sunday or Holiday, forfeits 12 d. B. 1. C. 10. S. 1 to 5.

Such Forfeiture, how levied, B. 1. C. 10. S. 12.

A Month's Absence forfeits 20 l. B. 1. C. 10. S. 5, 6.

How such Recusant is to be prosecuted and convicted, &c. B. 1. C. 10. S. 13 to 25.

A Convict pays 20 l. a Month till he conform, B. 1. C. 10. S. 7.

On Non-payment of the 20 l. a Month, the King may seize all the Recusant's Goods, and a Third of his Hereditaments, B. 1. C. 10. S. 8 to 12.

What Trades, Professions, and Offices, a Recusant is not to use, B. 1. C. 10. S. 25.

C

Where

An Alphabetical Index to both Books.

Where to be bound to the Good Behaviour, B. 1. C. 10. S. 26.

How the Forfeitures incurred by a Recusant, may be discharged as to himself or his Heir, B. 1. C. 10. S. 27, &c.

The Offence of suffering others to be absent from Church, B. 1. C. 11.

Whether Burglary may be in it, B. 1. C. 38. S. 7.

Brawling and striking, &c. in a Church, or disturbing the Service, how punishable, B. 1. C. 63. S. 15, 16, 17, 18.

Those that behave irreverently in the Church, how to be checked, B. 1. C. 63. S. 15.

Anciently all Churches were Sanctuaries, B. 2. C. 32. S. 3.

Church-Wardens.

May levy the Forfeitures for not coming to Church; (B. 1. C. 10. S. 12.) for not repairing Highways; (B. 1. C. 76. S. 42.) for keeping an unlicensed Ale-house; (B. 1. C. 78. S. 10.) for Tipling and Drunkenness; (B. 1. C. 78. S. 11, 12) and must present all such Offences, B. 1. C. 78. S. 13.

May sue an Appeal for the Goods of the Church, B. 2. C. 23. S. 27.

Cinque Ports.

Whether a Certiorari lie to their Courts, B. 2. C. 27. S. 11.

City.

An Alphabetical Index to both Books]

City.

Whether a good Venue, B. 2. C. 23. S. 61.

*Who shall be Jurors for Trials in Cities, B. 2;
C. 43. S. 8, 13, 15.*

Civil Law. See Constable.

*An Attainder by the Civil Law, corrupts not
the Blood, B. 1. C. 37. S. 3. B. 2. C. 4.
S. 9.*

*The Common Law gives credit to its Judges
Certificates, B. 2. C. 4. S. 9.*

*What Appeals are triable by it, B. 2. C. 23;
S. 4, 13.*

Clergy.

*From what Law the Privilege of Clergy had
its Original, B. 2. C. 33. S. 1.*

*Whether demandable by Persons who confess
themselves Guilty, and by Persons not in Or-
ders, B. 2. C. 33. S. 2.*

*Whether by those who stand mute, B. 2. C. 30.
S. 9. C. 33. S. 15, 16.*

Whether by Women, B. 2. C. 33. S. 3, 4.

*Whether more than once, by any besides Clerks,
and whether more than once in all Cases by
Clerks, B. 2. C. 33. S. 5, 6, &c.*

*How the Record whereon Clergy has been al-
lowed, is to be certified, in order to oust the
Party from having Clergy a second Time, B.
2. C. 33. S. 7, 8, 9.*

An Alphabetical Index to both Books.

Whether allowable at Common Law, for all Crimes, except High Treason and Sacrilege,

B. 2. C. 33. S. 10, 11, 12.

How an Indictment, &c. which ousts a Man of Clergy, must bring his Case within such Statute, B. 2. C. 33. S. 13.

Whether a Statute, by ousting the Principal from his Clergy, shall oust the Accessary, B. 2. C. 33. S. 14.

Whether a Statute taking away Clergy from Persons found Guilty, extend to those who stand Mute, &c. B. 2. C. 33. S. 15. 16.

A general View of the Statutes concerning Clergy, B. 2. C. 33. S. 17 to 35.

How far Clergy is ousted in Petit Treason, (B. 2. C. 33. S. 35.) Homicide, (B. 2. C. 33. S. 36, 37) Private Larceny from the Person, (B. 2. C. 33. S. 38.) Horse-stealing, (B. 2. C. 33. S. 39.) Larceny from a House or Shop, (B. 2. C. 33. S. 40, 41.) Stealing Wool from Tents, (B. 2. C. 33. S. 42.) Stealing Naval Stores, (B. 2. C. 33. S. 43.) Sacrilege, (B. 2. C. 33. S. 45, 46, 47.) Robbery on the Highway, (B. 2. C. 33. S. 47, 48, 49, 54.) Felony in stealing Goods in one County, being afterwards carried into another, (B. 2. C. 33. S. 50 to 54) Robbery in a House the Owner, &c. being therein, &c. (B. 2. C. 33. S. 55, 56, 57, 58.) Robbery in Booths or Tents, (B. 2. C. 33. S. 59. 60.) Robbery in a House, &c. no one being therein, (B. 2. C. 33. S. 62, 63, 64, 65) Robbery in general, (B. 2. C. 33. S. 66.) Burglary, (B. 2. C. 33. S. 67.) Arson B. 2. C. 33. S. 68.

How Peers are intitled to their Clergy, B. 2. C. 33. S. 69.

At

An Alphabetical Index to both Books.

At what Time Clergy is to be demanded, B. 2. C. 33. S. 70, 71.

Whether it may be granted where it is not demanded, B. 2. C. 33. S. 72.

Who is to judge whether the Party have a Right to it, and how such Right is to be tried. B. 2. C. 33. S. 73, 74, 75.

How the Ordinary was punishable for demanding or refusing a Clerk against Law, B. 2. C. 33. S. 76.

In what Manner a Clerk delivered to the Ordinary, was to be demesned at Common Law. B. 2. C. 33. S. 77 to 81.

How at this Day a Clerk convicted, is to be Burnt in the Hand, and committed, &c. B. 2. C. 33. S. 81 to 89.

Whether he may be transported, and how, B. 2. C. 33. S. 89, &c.

Whether an Admission to Clergy, clear a Man of Offences before committed, B. 2. C. 33. S. 82, 83, 84, 85.

How far it restores a Man to his Credit, &c. B. 2. C. 33. S. 85, 86, 87.

Whether Burning in the Hand be necessary for this Purpose, B. 2. C. 33. S. 86.

Clergymen. See Clergy and Clerk.

Not bound to attend the Sheriff, &c. at the Suppressing of a Riot, B. 1. C. 65. S. 18.

But must send their Teams, &c. to the Repairs of the Highways, B. 1. C. 76. S. 11.

Parsons not bound to attend the Leet, B. 2. C. 10. S. 3.

Cannot be Approvers, B. 2. C. 24. S. 2.

An Alphabetical Index to both Books;
How to be described in an Indictment, B. 1. C.
19. S. 11.
Are bound of Course to officiate, B. 1. C. 7. S. 1.

Clerk.

*Who such a Clerk as to be intituled to the Be-
nefit of Clergy*, B. 2. C. 33. S. 2. See
Clergy and Clergymen.

*Clerk of the Crown, of Assise, and of Peace,
&c.*

*How to certify a Conviction in order to oust
the Party of Clergy, the second Time*, B. 2.
C. 33. S. 7, 8, 9, 10.

Clipping. See Coin.

Where High Treason, B. 1. C. 17. S. 30.

Coin.

*High Treason in counterfeiting it, or bringing
false Money into England*, B. 1. C. 17. S.
29 to 36.

*Misprision of Treason to counterfeit foreign
Coin*, B. 1. C. 20. S. 6.

*Felony in paying or receiving counterfeit Mo-
ney at too low a Denomination*, B. 1. C. 18.
S. 1.

The Penalty for exporting it, B. 1. C. 18. S.
2, 3.

*Counterfeiters of Money, before whom to be
indicted and tried, &c.* B. 2. C. 7. S. 3. C.
8. S. 21.

The

An Alphabetical Index to both Books.

The Reward for Apprehending them, B. 2. C. 12. S. 10.

Where they are intitled to a Pardon, on discovering others, B. 2. C. 37. S. 4.

College of Physicians. See *Physicians*.

Command. See *Accessory*.

Commission. See *King*, *Justices*, *Oyer*, *Gaol-Delivery*, *Peace*, *Affise*, *Association*.

All Commissions of Oyer, Gaol-Delivery, Affise, and Peace, to be made by the King only, B. 2. C. 5. 1.

The Difference between a Commission and a Writ, B. 2. C. 5. S. 1, 2.

What Commissions are irrevocable, B. 2. C. 8. S. 16.

Where the Judges have no need of a Special Commission, B. 1. C. 45. S. 2.

Whether the Proceedings of Judge not authorised by their Commission, are void, B. 2. C. 50. S. 3.

Commitment.

Where a Person accused of a Crime, is to be committed, B. 2. C. 16. S. 1.

Who hath Power to make such Commitment, B. 2. C. 16. S. 2.

To what Prison the Party is to be committed, B. 2. C. 16. S. 3 to 7.

An Alphabetical Index to both Books.

How he may be removed, B. 2. C. 16. S. 7.

In what Manner the Party committed for Felony, and his Accusers, are to be examined, &c. B. 2. C. 16. S. 8, 9.

What ought to be the Form of a Commitment, B. 2. C. 16. S. 10, 11, 12.

At whose Charge the Party committed is to be sent to Prison, B. 2. C. 16. S. 13.

How Prisoners are to be certified to the Goal-Delivery, (B. 2. C. 16. S. 14) and how they are to be discharged, B. 2. C. 16. S. 15.

Common Law Courts.

The Offence of Derogating from them, B. 1. C. 19. S. 3, 4.

Common Prayer.

Ministers not using it, and Persons speaking in Derogation of it, how punished, B. 1. C. 7.

Companions. See Accessary.

Composition. See Penal Statute.

Computation. See Year and Day.

Computation of Months, B. 1. C. 82. S. 7.

Computation of Miles, B. 1. C. 12. S. 8.

Concealment. See Misprision.

Concealments of Inquests, how punishable, B. 1. C. 59. S. 2.

Condi-

An Alphabetical Index to both Books.

Condition.

A Pardon may be conditional, B. 2. C. 37.

S. 34.

Whether a Condition can be forfeited for Treason, B. 2. C. 49. S. 3. 16.

Confession.

What an exprefs Confession, and whether it estops a Defendant to plead Not guilty, B. 2. C. 31. S. 1.

Whether a Judge may refuse to record it, B. 2. C. 31. S. 2.

What an implied Confession, and whether an Estoppel to plead Not guilty, B. 2. C. 31. S. 3, 4.

How far a Confession is Evidence, B. 2. C. 46. S. 3, 4.

Conjuration, B. 1. C. 3.

Consent.

What Consent of the Woman excuses a Defendant in an Indictment of forcible Marriage, B. 1. C. 42. S. 4, 5.

What such a Consent to a Ravisher, as forfeits the Woman's Lands, &c. B. 2. C. 23. S. 37, 40, 41.

Conspiracy.

Declaration by Statute, who are Conspirators, B. 1. C. 72. S. 1.

Whether

An Alphabetical Index to both Books,
Whether a Writ of Conspiracy lie where the Party has not been acquitted, B. 1. C. 72. S. 2.
Whether it be material that the Indictment were insufficient, or the Matter not scandalous, or that the Court had no Jurisdiction, B. 1. C. 72. S. 3.
Whether Judges or Jurors be punishable as Conspirators, B. 1. C. 72. S. 4.
Whether the Confederacy must be both false and malicious, B. 1. C. 72. S. 5.
Whether there must be more than one Person in it, B. 1. C. 72. S. 6.
Judgment in Conspiracy, B. 1. C. 72. S. 7.
It disables a Man from being a Witness or Juror, B. 2. C. 43. S. 16. C. 46. S. 16.
Conspiracy to raise the Price of Victuals or Work, how punishable, B. 1. C. 80. S. 4.
Conspiracy to levy War where Treason, B. 1. C. 17. S. 17.

Constable.

The ancient Authority of the Lord High Constable, B. 2. C. 4. S. 1.
Statutes concerning Pleas to be holden before the Constable and Marshal, B. 2. C. 4. S. 3, 4, 5.
Their Jurisdiction, as to scandalous Words, Precedency, Marshalling, Funerals, &c. (B. 2. C. 4. S. 6.) and Treason beyond Sea, (B. 2. C. 23. S. 13. C. 4. S. 8.) and Felonies committed at Sea, &c. (B. 1. C. 31. S. 1. C. 37. S. 3.) and Bills of Appeal, B. 2. C. 23. S. 4. C. 45. S. 1.

Whether

An Alphabetical Index to both Books.

Whether the Marshal can hold a Court without the Constable, B. 2. C. 4. S. 7.

The Court is governed by the Civil Law, (B. 2. C. 4. S. 9. C. 23. S. 4.) and may be prohibited, B. 2. C. 4. S. 11.

May be held before Commissioners, B. 2. C. 4. S. 12.

The Power of a High and Petit Constable at Common Law, in suppressing Affraiers and Night-Walkers, &c. B. 1. C. 63. S. 10, 11. B. 2. C. 10. S. 14. C. 12. S. 5, 6.

Where they must have a Warrant, and where a Warrant will justify them, B. 2. C. 13. S. 7. 8.

How they are to be made and removed, &c. B. 2. C. 10. S. 15.

Who are privileged from being Constables, B. 2. C. 10. S. 16 to 21.

How a Man may be punished for refusing the Office of Constable, B. 2. C. 10. S. 21.

The Power of Justices of Peace, in the Appointment of Constables, B. 2. C. 10. S. 22.

Where it is Murder to kill a Constable. See Peace-Officer,

Constables may compel Inn-keepers to receive Guests, B. 1. C. 78. S. 2.

Construction. See Statute and Conviction.

Statutes beginning with Inferiors shall not be construed to extend to Superiors, B. 1. C. 45. S. 2.

Where one Part of a Statute shall expound another, B. 1. C. 69. S. 16.

Affir-

'An Alphabetical Index to both Books.

Affirmative Statutes do not abrogate the old Common Law, B. 1. C. 76. S. 12. B. 2. C. 10. S. 2. C. 27. S. 28.

But later Statutes take off Exemptions by former Statutes, B. 1. C. 77. S. 7.

Statutes punishing Offenders, generally extend not to Accessaries, B. 2. C. 33. S. 14. C. 40. S. 4.

Contempt. See Attachment and Certiorari.

Contempts against the King by striking in his Palace, (B. 1. C. 21. S. 1.) or in his Superior Courts, (B. 1. C. 21. S. 2.) or by rescuing a Prisoner from such Courts, (B. 1. C. 21. S. 3.) or by making an Affray in any Court of Record, (B. 1. C. 21. S. 4, to 7.) or by reproaching a Judge, (B. 1. C. 21. S. 4, 5, 8, 9.) or by threatening an Adversary, Counsellor, Attorney, Juror, or Gaoler, (B. 1. C. 21. S. 10.) or by Discovering the King's Evidence, or advising a Prisoner to stand mute, or by dissuading a Witness from giving Evidence, B. 1. C. 21. S. 11.

Contempts in the Torn, &c. how punishable, B. 2. C. 1. S. 6. C. 10. S. 5, 6.

Contempts against the King's Prerogative, by refusing to assist him in Parliament, or in his Council, or in his Wars, (B. 1. C. 22. S. 1, 3.) or by disobeying his Commands or Prohibitions under his Seal or Signet, &c. or by refusing to give Evidence of Treason, &c. (B. 1. C. 22. S. 3.) or by receiving a Pension from a foreign Prince, B. 1. C. 22. S. 2.

Contempts

An Alphabetical Index to both Books.

Contempts against his Person by Words or Actions, tending to make him unsafe, odious, or contemptible, B. 1. C. 23.

Contempts against his Title, either by denying it, (B. 1. C. 24. S. 1.) or not taking the Oaths, &c. B. 1. C. 24. S. 2. &c.

Whether it be necessary to conclude an Indictment or Information in contemptum Regis, B. 2. C. 25. S. 60. C. 26. S. 14.

Contra coronam & dignitatem Regis.

Whether necessary in the Conclusion of an Indictment, B. 2. C. 25. S. 59.

Contra formam Statuti.

Whether necessary in an Appeal of Rape, and in an Indictment on a Statute, and how far it helps or vitiates an Indictment or Appeal, B. 2. C. 23. S. 36, 38, 64. C. 25. S. 4, 64, to 75.

Whether an Indictment concluding contra formam Statuti, may be maintained as an Indictment at Common Law, B. 2. C. 25. S. 73.

Contra pacem.

Whether necessary in the Conclusion of an Indictment or Information, B. 1. C. 81. S. 4. B. 2. C. 25. S. 58. C. 26. S. 14.

Conviction.

An Alphabetical Index to both Books,

Conviction. See *Auterfoits, Acquit, Attaint, and Convict.*

The Law implies that an Offender must be convicted, B. 1. C. 10. S. 6. C. 63. S. 15.

Conviction of Recusancy, where to be certified, and to what Penalties it subjects the Offender, B. 1. C. 10. S. 8 to 18.

What shall oust to such Conviction, and where it may be quashed, &c. B. 1. C. 10. S. 14 to 18.

Whether a new Offence be looked on as a second before there is Conviction for the first, and what is a sufficient Conviction of the first, B. 1. C. 40. S. 2. C. 70. S. 6.

Conviction of forcible Entry on View, B. 1. C. 64. S. 3, 4, 5, 6, 23.

What is forfeited on a Conviction of Treason or Felony, B. 2. C. 49. S. 9.

Copper.

Felony to Blanch it, B. 1. C. 18. S. 1.

Copy.

Where a Defendant shall have a Copy of the Indictment (B. 2. C. 39. S. 9.) or of the Panel of the Jury, B. 2. C. 41. S. 19.

How far the Copying of a Libel, or having the Copy of it, is criminal, B. 1. C. 73. S. 9. 11.

Copyhold.

An Alphabetical Index to both Books;

Copyhold.

Whether forfeitable for Treason or Felony, B.
2. C. 49. S. 5.

Whether liable to be seised for Recusancy, B. 1.
C. 10.

Corn. See Badger.

Lawful to buy it in order to make it into Malt,
Meal, or Oat-meal, B. 1. C. 80. S. 11, 18.
Seed-Corn, how to be bought, B. 1. C. 80. S.
16.

Transportation of it, how encouraged, B. 1.
C. 80. S. 19.

It may be reserved on a Lease, B. 1. C. 80.
S. 30.

Coroner.

Why so called, and what his Office ancienly,
B. 2. C. 9. S. 1.

Who is qualified to be a Coroner, B. 2. C. 9. S. 3.

How he is to be chosen, B. 1. C. 9. S. 4, 5.

His Authority ceases not by the King's Demise,
B. 2. C. 1. S. 3. C. 9. S. 4.

How he may be removed, B. 2. C. 9. S. 6.

Whether he may inquire of Offences on the Sea
B. 2. C. 9. S. 7.

Whether of Offences within the Verge of the
King's House, B. 2. C. 9. S. 8, 9.

In what Manner and in what Cases he is to take
an Inquisition of Death, B. 2. C. 9. S. 10.
B. 1. C. 27. S. 8.

An Alphabetical Index to both Books,

Whether he shall take such Inquest of the Death of Persons dying in Prison, B. 2. C. 9. S. 10.

Whether such Inquest be void, unless taken on View, B. 2. C. 9. S. 10, 11.

To what Accessaries and Circumstances it shall extend, B. 2. C. 9. S. 12.

How the Coroners shall be amerced, if remiss in making such Inquiry, &c. B. 2. C. 9. S. 13, 14, 15.

How he is to take the Information of Witnesses, and bind them over, &c. B. 2. C. 9. S. 14.

Whether the Party can be acquitted on a Trial of such Inquest by a Jury which doth not find who did the Fact, B. 2. C. 9. S. 16.

Whether such Inquest forfeit Goods, and whether it be traversable, B. 2. C. 49. S. 10, 11. See Traverse.

Whether he may enquire of Rape, Breach of Prison, Royal Fishes, House-breaking and Treasure Trove, B. 2. C. 9. S. 17.

His Power as to Bills of Appeal, B. 2. C. 9. S. 18, 19, 20, 21. C. 23. S. 3.

As to Appeals of Approvers, B. 2. C. 9. S. 22.

As to the Recording of Confession of Felony and Abjuration, B. 2. C. 9. S. 23.

Where the Act of one is effectual for all, B. 2. C. 9. S. 24.

Whether he can take any Fee for doing his Office, B. 2. C. 9. S. 25.

Whether any Traverse can be taken to his Record, B. 2. C. 9. S. 26, &c.

Where an Alias inquirendum lies on his Inquest, B. 2. C. 9. S. 29.

What

An Alphabetical Index to both Books.

What Justices may assign a Coroner to take
the Appeal of an Approver, B. 2. C. 24.
S. 6.

Corporation.

How it may be bound to repair an Highway,
B. 1. C. 76. S. 6. C. 77. S. 2.

Correction.

Where an Excuse of Homicide, &c. B. 1. C.
29. S. 1.

Where one convicted of Larceny, is to be com-
mitted to the House of Correction, B. 2. C.
33. S. 88.

Corruption of Blood.

Not to be caused by Proceedings by the Civil
Law, B. 1. C. 37. S. 3. B. 2. C. 4. S. 9.

Nor by the Offence of a Felo de se, B. 1. C. 27.
S. 6.

The Effect of it, B. 2. C. 49. S. 35.

How it may be salved, B. 2. C. 49. S. 37.

Living against the Corruption of Blood, how
construed, B. 1. C. 40. S. 3. B. 2. C. 49.
S. 26.

Costs.

Double Costs, how computed, B. 1. C. 70.
S. 5.

Where Costs shall be given on a criminal Infor-
mation, B. 2. C. 26. S. 2, 9.

Where on a qui tam, B. 2. C. 26. S. 41, 42.

D

How

An Alphabetical Index to both Books,
How to be taxed on a Certiorari, B. 2. C. 27. S. 31, 32.

Whether Costs in the Spiritual Court are discharged by a Pardon, B. 2. C. 37. S. 29 to 33.

Council Privy.

Felony in killing or assaulting a Privy Counsellor, B. 1. C. 18. S. 5.

The Offence of a Privy Counsellor, in refusing to give his Advice, B. 1. C. 22. S. 1.

The Offence of disobeying the lawful Commands of the Privy Council. B. 1. C. 22. S. 3.

Whether Persons committed by it, be bailable, B. 2. C. 15. S. 18, 33, 34.

Privy Counsellors may commit for Treason, B. 2. C. 16. S. 2.

Counsel.

Where a Prisoner shall have Counsel in a capital Case, B. 2. C. 39.

Counsellor.

How far he may maintain another's Suit, B. 1. C. 83. S. 20.

Whether punishable for Male Practice, B. 1. C. 83. S. 22. B. 2. C. 22. S. 17.

Whether privileged from being made a Constable, B. 2. C. 10. S. 16.

Count.

Vicious, if it do not pursue the Writ, B. 2. C. 23. S. 8, 48.

Must shew in Appeal by an Heir, how the Plaintiff is Heir, B. 2. C. 23. S. 26.

An Alphabetical Index to both Books.

On 6 R. 2. must shew how the Party is kin, B. 2. C. 23. S. 44.

How it must shew the Substance of the Fact, (B. 2. C. 23. S. 49 to 56.) and the Time, (B. 2. C. 23. S. 56, 57, 58, 59.) and the Place, B. 2. C. 23. S. 60.

Whether there must one count in Appeal against all the Defendants, B. 2. C. 23. S. 62.

Counterfeiter.

Counterfeiting the Coin. See Coin.

Counterfeiting the King's Seal, B. 1. C. 17. S. 28.

Counterfeiting Bank-Notes, Exchequer Bills, Stamps, Seal of South-Sea Company, or Lottery Orders, Felony, B. 1. C. 58.

Counter-Roll, B. 2. C. 9. S. 18.

County. See Local.

In what County Justices of Oyer, &c. are to sit, B. 2. C. 5. S. 16.

In what County Persons attainted are to be executed, B. 2. C. 51. S. 1.

Death in one County by a Stroke in another, where triable by a Joinder of the Counties, B. 1. C. 31. S. 3. B. 2. C. 23. S. 18. C. 25. S. 23.

Marriage in one County, after a Force in another, where indictable, B. 1. C. 42. S. 8. B. 2. C. 40. S. 5.

An Alphabetical Index to both Books.

Other Offences arising in different Counties, where indictable, B. 1. C. 45. S. 4. B. 2. C. 25. S. 23 to 36. C. 40. S. 5.

The County to repair Common Bridges, B. 1. C. 77. S. 2.

Where a qui tam must be brought in the proper County, B. 2. C. 26. S. 21 to 30.

What Court can award Process out of the County where it sits, B. 2. C. 27. S. 1.

Whether a Man shall be ousted of Clergy on an Indictment for stealing Goods in one County, which were taken by Robbery or Burglary in another, B. 2. C. 33. S. 29, 30, 50 to 55.

From what County a Jury is to be returned, and where it may be from any County, B. 2. C. 40. S. 1, 2, 3, 4.

In what County a foreign Plea is to be tried, B. 2. C. 40. S. 6.

Whether Persons be bound to take Notice of all Attainders in their own Counties, B. 2. C. 29. S. 18.

To what Gaol a Man is to be committed who is taken for an Offence done out of the County, B. 2. C. 16. S. 5, 6.

Court. See Commission, Judge, Justices, Jurisdiction.

Where there are divers Judges, any of them may act, B. 2. C. 1. S. 2. C. 9. S. 24.

What Courts can fine or imprison, (B. 2. C. 8. S. 5, 6.) or discharge an Arrest of a Suitor, &c. B. 2. C. 1. S. 8.

No Averment against the Proceedings of a Court of Record; neither can they be re-
moved

An Alphabetical Index to both Books:

moved but by Error or Certiorari, B. 2. C. 1. S. 5.

The Offence for making an Affray or other Disturbance in the King's Courts, B. 1. C. 21.

Whether Persons committed by Courts of Record, are bailable, B. 2. C. 15. S. 19, 36, 37. See *Bail*.

Where the Court shall ex officio abate a Writ. See *Abatement*.

All Courts are derived from the Crown, B. 2. C. 1. S. 1.

The Jurisdiction of ancient Courts is not to be altered, B. 2. C. 1. S. 1.

The Power incident to all Courts of Record, B. 2. C. 1. S. 5, 6, 7, 8.

Craven, B. 2. C. 45. S. 2.

Credit.

restored by burning in the Hand, (B. 2. C. 33. S. 85.) or by a Pardon, B. 2. C. 37. S. 36.

Curfing, B. 1. C. 6. S. 3.

custodia Marechalli, B. 2. C. 23. S. 1.

An Alphabetical Index to both Books.

Custom.

Customs concerning the serving the Office of Constable, B. 2. C. 10. S. 15.

Customs concerning By-laws in a Leet, B. 2. C. 10. S. 27.

No such Custom can bind a Man privileged by a Custom of a Court of Westminster-Hall, B. 2. C. 10. S. 16.

Cut-Purse, B. 1. C. 35.

Excluded from Clergy, B. 2. C. 33. S. 38.

Cyder.

Exportation of it, B. 1. C. 80. S. 22.

Damages.

W *Here recoverable for a malicious Appeal, B. 2. C. 23. S. 87, &c.*
Whether they may be assessed by the Court, without Writ of Inquiry, B. 2. C. 23. S. 92.

Whether they can be recovered on an Indictment, B. 2. C. 25. S. 3.

Day. See Time.

Where a Suit is put without Day, B. 2. C. 27. S. 53, 54.

An Alphabetical Index to both Books.

No Fraction of a Day, B. 2. C. 23. S. 17.

Death casual, B. 1. C. 26.

Debt,

Fines, &c. in a Leet, how recoverable by Action of Debt, B. 2. C. 10. S. 8.

Deceit, B. 1. C. 71. B. 2. C. 22. S. 25.

Decies tantum, B. 1. C. 85. S. 5.

Declaration against Popery, B. 1. C. 14, 15. S. 7.

Default.

What Process to go on a Default, B. 2. C. 27. S. 10.

Defence. See *Homicide and Manslaughter.*

Demand.

Demand of Clergy, whether necessary, and how to be made, B. 2. C. 33. S. 70, 71, 72.

Demise.

Whether Commissions determine, (B. 2. C. 11. S. 3. 4.) and Suits be put without Day by the Demise of the King, B. 2. C. 27. S. 53.

Demurrer.

Judgment on Demurrer of the same Force as a Conviction by Verdict, B. 1. C. 10. S. 6.

An Alphabetical Index to both Books.

*Whether final Judgment shall be always given
on a Demurrer in criminal Cases, B. 2. C.
31. S. 4, 5, 6.*

For Demurrer in qui tam, B. 2. C. 26. S. 49.

Denizen, B. 2. C. 43. S. 28.

Deodand.

*What liable to be forfeited as such, B. 1. C. 26.
S. 1, 2, 3, 4.*

*Within what Time after the Wound the Party
must die, B. 1. C. 26. S. 5.*

*When a Deodand may be seised, B. 1. C. 26.
S. 6.*

Depending.

*Where it is a good Plea that a prior Suit is
depending. See Abatement.*

Depositions.

*How far they are Evidence, B. 2. C. 46. S.
5, 6.*

Deprivation.

*Whether a Clerk may be deprived for a Crime
for which he has had his Clergy, B. 2. C.
33. S. 85.*

*Where a Deprivation is avoided by a Pardon,
B. 2. C. 37. S. 37.*

Deputy.

An Alphabetical Index to both Books,

Deputy.

Whether a Judge can act by Deputy, B. 2. C. 1. S. 2.

Where a Bond for paying Money for a Deputation is within 5 & 6 Ed. 6. B. 1. C. 67. S. 6.

Constable may act by Deputy, B. 2. C. 10. S. 15.

Where the Principal must answer for an Escape suffered by his Deputy, B. 2. C. 19. S. 14, 15.

De son tort Demesne, B. 2. C. 12. S. 6.

Detainer. See Forcible Entry and Detainer,

Dice, B. 1. C. 71. S. 1. B. 2. C. 12. S. 8.

Dignity.

Whether a Justice's Acceptance of a Name of Dignity, determines his Commission, B. 2. C. 5. S. 6.

Disability.

Popish Recusancy, how to be pleaded in Disability, B. 1. C. 12. S. 2, 3.

Who are disabled to sue on a Penal Statute, B. 2. C. 26. S. 36.

Discon-

An Alphabetical Index to both Books,

Discontinuance.

What amounts to a Discontinuance of Process, B. 2. C. 27. S. 51, 52.

Where a Suit is put without Day, B. 2. C. 27. S. 53, 54.

Discontinuance of Process, how far fatal, and how helped, B. 2. C. 27. S. 55, 56.

Discretion.

How far required to make a Man liable to a criminal Prosecution, B. 1. C. 1.

What is such Want of Discretion, as disables a Man from being a Witness, B. 2. C. 46. S. 21.

What Matters are left to the Discretion of the Justices, B. 1. C. 63. S. 14. C. 61. S. 2. C. 64. S. 40, 41. B. 2. C. 26. S. 9. C. 27. S. 12. C. 48. S. 9.

Disjunctive.

An Indictment charging a Man disjunctively, is void, B. 2. C. 25. S. 38.

Dispensation.

The King's dispensing Power, B. 1. C. 67. S. 5. B. 2. C. 37. S. 24 to 34.

The Power of dispensing with Penal Statutes, not to be separated from the Crown, B. 2. C. 26. S. 56.

Disseisin. See *Forcible Entry.*

Dissenters. See *Church and Protestant Dissenters.*

Distress.

An Alphabetical Index to both Books.

Distrōs.

Whether incident to a Fine or Amerciament in the Leet, B. 2. C. 10. S. 9.

Whether it may be taken in the Highway, and whose Goods may be distrained, B. 2. C. 10. S. 10.

Whether it may be sold, and whether it require a Special Warrant, B. 2. C. 10. S. 13.

Ditches.

Where Nusances, and by whom, and in what Manner to be scowred, &c. B. 1. C. 76. S. 30 to 37.

Doors.

Where Doors may be broken open to make an Arrest, B. 1. C. 63. S. 11. B. 2. C. 14.

Double Costs, how computed, B. 1. C. 70. S. 5.

Dove-cote, B. 1. C. 75. S. 5.

Dower.

Where a Woman shall forfeit her Dower, for Treason or Felony, B. 1. C. 27. S. 6. B. 2. C. 49. S. 32, 33, 34.

Where for Recusancy, B. 1. C. 12. S. 13, 14.

Drovers.

How licensed, B. 1. C. 80. S. 26 to 30.

An Alphabetical Index to both Books;

Drunkenness.

Forfeits Five Shillings, B. 1. C. 78. S. 12.

Excuses no Crime, B. 1. C. 1. S. 3.

Common Drunkards to be bound to the Good Behaviour, B. 1. C. 61. S. 2.

Ducking-Stool, B. 1. C. 75. S. 11.

Duel.

Where it is Murder to kill a Man in a Duel.

See Murder and B. 1. C. 31. S. 6, 7, 8, 9, 10, 11, 12, 13, 14, 18.

Dwelling-House. *See House.*

Ecclesiastical Court. *See Spiritual Court.*

Ecclesiastical Persons. *See Clergymen.*

Education, Popish, B. 1. C. 15. S. 1. 2, 3.

Eggs.

The Offence of taking the Eggs of Swans or Hawks, B. 1. C. 33. S. 16.

Egyptians, B. 1. C. 54.

Election.

Election of several Remedies, B. 1. C. 19. S. 2.
Confer-

An Alphabetical Index to both Books.

Conservators of the Peace, by Election, B. 2. C. 8. S. 5.

Whether the Appellee hath his Election to wage Battel, or plead the General Issue, B. 2. C. 24. S. 9. C. 45. S. 1.

Election into an Office, how set forth in an Indictment, B. 2. C. 25. S. 37.

Elopement.

Bars a Woman of her Dower, but not of her Appeal, B. 2. C. 23. S. 20.

Embesilment. See Imbesilment.

Embracery, B. 1. C. 85.

Emission, B. 1. C. 4.

Enemy.

Rescous by Enemies, no Escape, B. 2. C. 19. S. 4.

Lawful for any one to take up Arms against Enemies, B. 1. C. 63. S. 7.

English. See Latin.

Additions may be in English, B. 2. C. 23. S. 69.

The Body of an Indictment in English, is void, B. 2. C. 25. S. 54.

Where a Criminal is to be arraigned in English, B. 2. C. 28. S. 2.

Engrossing.

An Alphabetical Index to both Books.

Engrossing. See *Forestalling.*

Enquest. See *Inquisition and Armour.*

Entry. See *Burglary and Forcible Entry.*

Error.

Lies not of Proceedings by the Civil Law, B. 2. C. 4. S. 9.

Whether it lie for a Conviction, B. 1. C. 10. S. 15. B. 2. C. 50. S. 1.

For what Errors an Outlawry, &c. for Recusancy may be reversed, B. 1. C. 10. S. 16.

Whether an erroneous Acquittal or Attainder, be a Bar of a subsequent Prosecution, B. 2. C. 35. S. 7. C. 36. S. 1, 2 and 10.

Whether an erroneous Attainder be sufficient to justify a Proceeding against the Accessary, B. 2. C. 29. S. 22.

Whether an erroneous Attainder bar Dower, and whether the Reversal of it avoid the Bar of a Fine and Nonclaim, B. 2. C. 49. S. 34.

Whether a Person Attainted isailable on an Error in the Record, B. 2. C. 15. S. 38.

Whether a Writ of Error be of any Effect where the Record is not certified in Time, B. 2. C. 27. S. 37.

Whether it remove a Record which varies from it, B. 2. C. 27. S. 47.

It cannot be assigned for Error, that the Directions of a Statute were not observed by the Officer, B. 2. C. 26. S. 29.

Whether

An Alphabetical Index to both Books.

Whether it be a Contempt, &c. to proceed after a Writ of Error, B. 2. C. 22. S. 28.

Whether it be Error in an Attainder not to shew that the Party was arraigned, B. 2, C. 28. S. 5.

Escape.

Escapes suffered by Officers, B. 2. C. 19.

By private Persons, B. 2. C. 20.

What shall be adjudged an Escape, B. 2. C. 15. S. 5. C. 19. S. 1, 2, 3, 4.

Where voluntary, and where negligent, B. 2. C. 19. S. 5.

Where the Prisoner may be retaken, B. 2. C. 19. S. 6, 7.

What ought to be the Form of the Indictment, B. 2. C. 19. S. 8.

How the Offender is to be tried, B. 2. C. 19. S. 9, 10, 11.

The Punishment of a voluntary Escape, B. 2. C. 19. S. 12, 13, 14. C. 20. S. 2.

Of a negligent one, B. 2. C. 19. S. 15, &c.

Escheat.

Whether the Lord may enter on an Escheat for Felony, and what shall so escheat, B. 2. C. 49. S. 1 to 7.

No Escheat of Things not lying in Tenure, B. 2. C. 49. S. 2.

Whether a Title of Escheat, being vested, shall be devested by Matter subsequent, B. 2. C. 36. S. 4.

Whether

**An Alphabetical Index to both Books,
Whether the Lord by Escheat, may enter with-
out due Process, &c. B. 2. C. 49. S. 1.**

Esquire.

*Whether a good Addition, and whether it be
not sufficient to call him, Gentleman &
e converso, B. 2. C. 23. S. 66, 72.*

Estoppel.

*Where a Verdict against a Man, (B. 2. C. 38.
S. 3.) or Confession by him; (B. 2. C. 31. S.
1, 3.) in one Action estops him from plead-
ing Not guilty in another.*

Eves-Droppers.

*To be bound to the Good Behaviour, B. 1. C.
61, 2.*

May be indicted in the Leet, B. 2. C. 10. S. 26.

Evidence. See Witnesses and general Issue.

*Whether Evidence can be given against a Man
in his Absence, B. 2. C. 46. S. 1.*

*Where a Bill of Exceptions lies on the Over-
ruling of Evidence, B. 2. C. 46. S. 1.*

*In what Cases there must be two Witnesses, B.
2. C. 46. S. 2.*

*How far a Confession shall be Evidence, B. 2.
C. 46. S. 3, 4.*

*How far Depositions are Evidence, B. 2. C.
46. S. 4, 5, 6, 7, 8, 9, 10.*

*Whether Hearsay, (B. 2. C. 46. S. 11.) or
Similitude of Hands, (B. 2. C. 46. S. 12.)
be Evidence.*

Whether

An Alphabetical Index to both Books.

Whether a Husband can be Evidence against his Wife, et e converso, B. 2. C. 46. S. 13.

Whether a Judge or a Juror can be a Witness, B. 2. C. 46. S. 14.

Whether Accomplices can be Witnesses, B. 2. C. 46. S. 15.

Whether a Person infamous, (B. 2. C. 46. S. 16, 17, 18.) *or interested*, (B. 1. C. 82. S. 16. B. 2. C. 46. S. 19, 20.) *can be a Witness*.

Whether an Infidel, or a Person wanting Discretion, or an Alien, or a Villein, can be a Witness, B. 2. C. 46. S. 21.

Whether Witnesses must be always examined on Oath, B. 2. C. 46. S. 22.

What Process shall go against Witnesses, B. 2. C. 46. S. 23.

What Evidence is required on an Indictment contra formam Statuti, B. 2. C. 25. S. 73.

What Evidence is required on an Indictment against a Man as Principal, B. 2. C. 35. S. 10.

Whether a Variance, as to Time, (B. 2. C. 25. S. 50. C. 46. S. 25, 26.) *or Place*, (B. 2. C. 25. S. 52. C. 46. S. 27.) *be material*.

Whether it be sufficient to prove one Overt-Act of Treason, and in what Country it must be proved, B. 2. C. 46. S. 27, 28.

Where a Variance from the Evidence, and the Libel or Words indicted, is material, B. 2. C. 46. S. 29.

Where a Variance between an Indictment of Death and the Evidence in Respect of the Manner and Circumstance of the Fact, is material, B. 2. C. 46. S. 30 to 35.

E

Whether

An Alphabetical Index to both Books.

Whether Evidence of one Species of Treason will maintain an Indictment for another, B. 2. C. 46. S. 30.

Where a Presumption amounts to Proof, B. 2. C. 46. S. 35.

How a Woman shall be indicted for the Murder of her Bastard, B. 2. C. 46. S. 36.

Where Son Assault Demesne may be given in Evidence, B. 2. C. 46. S. 37.

Where an Exception in a Statute may be given in Evidence, in an Indictment on such Statute, B. 2. C. 46. S. 37.

Examination.

Where the Examination of an Offender, or of Informers, may be given in Evidence, B. 2. C. 46. S. 3, 4, 5, 6, 7, 8.

In what Manner Justices of Peace, (B. 2. C. 15. S. 28, 29. C. 16. S. 8, 9.) and Coroner, (B. 2. C. 9. S. 14.) are to take the Examinations of Felons and Informers, upon Bailment or Commitment, &c.

Whether Justices of Peace may take Examinations of Treason and Felonies, nor within their Commission, B. 2. C. 8. S. 19, 20.

Exception.

How a Man must shew that he is not within the Exceptions of a Pardon, B. 2. C. 37. S. 42.

Whether a Person prosecuted on a Statute, may give in Evidence an Exception therein to his Favour, B. 2. C. 46. S. 37.

An Alphabetical Index to both Books.

Whether an Exception of Felonies in a Pardon, extends to those whereof any Persons are attainted, B. 2. C. 37. S. 11.

Whether a Bill of Exceptions lies in capital Cases, B. 2. C. 46. S. 1.

Exchequer Bills.

Felony to counterfeit them, B. 1. C. 58. S. 2, 3.

Excise.

Whether Orders concerning it, be removeable by Certiorari, B. 2. C. 27. S. 18.

Excommunication.

Popish Recusants disabled, &c. as Persons excommunicated, B. 1. C. 12. S. 17.

Those that make an Affray in a Church are ipso facto excommunicate, yet the Offence must have proper Proof, B. 1. C. 63. S. 15.

Whether Persons excommunicated be bailable, B. 2. C. 15. S. 23, 32.

Whether they may claim their Clergy, B. 2. C. 33. S. 2.

Whether they may be Jurors, B. 2. C. 43. S. 16.

Excusable Homicide. See Homicide.

Execution.

f an Infant, may be respited at Discretion, B. 1. C. 1. S. 5.

E 2

Against

An Alphabetical Index to both Books,

Against whom to be awarded by the King's Bench, B. 2. C. 51. S. 1.

In what County it must be, B. 2. C. 51. S. 1.

Whether it may be without Writ, B. 2. C. 51. S. 3.

How it must pursue the Judgment, B. 1. C. 28. S. 5. B. 2. C. 51. S. 4.

By whom it must be executed, B. 1. C. 28. S. 4. B. 2. C. 51. S. 5.

When it may be said to be fully executed, B. 2. C. 51. S. 6.

Whether it may be pardoned in Part only, or in the Whole, and the Judgment remain in Force, in other Respects, B. 2. C. 37. S. 10. C. 51. S. 4.

Executors.

Cannot bring an Appeal for a Larceny, from the Testator, but may bring Error, to reverse his Attainder, B. 2. C. 23. S. 28. C. 50. S. 9.

Executory.

Difference between a Record executed and executory, as to the Removal thereof by Certiorari, B. 2. C. 27. S. 21.

Exigent.

In what Manner to be awarded, B. 2. C. 27. S. 10, 58, &c.

Whether Goods be forfeited by a Default till the Exigent, B. 2. C. 49. S. 12.

An Alphabetical Index to both Books.

Existens, B. 2. C. 25. S. 40, 70.

Exportation. See *Transportation.*

Exposition. See *Statute and Penal Statute,*
and Felony by Statute.

Extortion.

What is Extortion, and how punishable and in-
dictable, B. 1. C. 68. B. 2. C. 25. S. 29.

Eyre, B. 2. C. 3. S. 7. C. 23. S. 2. C. 24.
S. 8. C. 27. S. 1. C. 41. S. 4.

Facto.

G *Aoler de facto punishable for an Escape,*
B. 2. C. 19. S. 12.

False Tokens, B. 1. C. 71. S. 3, 4.

Falsifying Judgment. See *Time and Error,* B.
2 C. 50.

Farthings.

Coining of them not Treason, B. 1. C. 17.
S. 31.

E 3

Fees.

An Alphabetical Index to both Books.

Fees.

A Gaoler may insist on his Fees, B. 2. C. 22. S. 18.

What Fee is due on the Allowance of a Pardon, B. 2. C. 37. S. 50.

What Fees are due to a Coroner, B. 2. C. 9. S. 25.

How far the Escape of one detained only for his Fees, is Criminal, B. 2. C. 19. S. 1.

Felo de se.

Must be compos mentis, B. 1. C. 27. S. 2.

May be such by Construction of Law, without any Intent against his own Life, B. 1. C. 27. S. 3.

But not if killed by another at his Request, B. 1. C. 27. S. 4.

What he forfeits, and whether his Bloud be corrupted, B. 1. C. 27. S. 5, 6.

The Relation of the Forfeiture, and how it may be salved, B. 1. C. 27. S. 8.

The Inquest, before whom to be found, and with what Certainty, (B. 1. C. 27. S. 8, 9.) and whether it be traversable, B. 2. C. 9. S. 28. C. 49. S. 10, 11.

Where a new one shall be taken for a Defect in the first, B. 2. C. 9. S. 30.

Whether the Offence of Felo de se, come under the Exception of Murder, in a Pardon, B. 2. C. 37. S. 16.

Felonice.

An Alphabetical Index to both Books.

Felonice.

Necessary in all Appeals, and in all Indictments of Felony, B. 2. C. 23. S. 6, 50. C. 25. S. 36.

What Evidence comes up to it, B. 2. C. 23. S. 6.

Felony by Common Law.

The Import of the Word Felony, B. 1. C. 25. S. 1. B. 2. C. 23. S. 5.

Not to be committed by a bare Intention, B. 1. C. 25. S. 2.

Included in all Treason. B. 1. C. 25. S. 3.

Not imputable to excusable Homicide, B. 1. C. 29. S. 6.

The Judgment in capital Felony, B. 2. C. 48. S. 4.

What a good Pardon of Felony, B. 2. C. 37. S. 7 to 21.

Whether a Man may be found Guilty of Trespafs, on an Indictment of Felony, B. 2. C. 47. S. 4.

What is to be done where on an Indictment or Action of Trespafs, the Fact appears to have been Felonious, B. 2. C. 47. S. 4.

What is forfeited by Felony. See Forfeiture, B. 2. C. 49.

All Felonies are several, B. 2. C. 37. S. 18, 20.

Whether Persons indicted for it, are bailable, B. 2. C. 15. S. 16, &c. See Bail.

Grant of Felon's Goods, how expounded, B. 2. C. 30. S. 7.

An Alphabetical Index to both Books.

What is required in a Pardon of Felony, B. 2. C. 37 S. 7 to 22.

Whether it forfeit the Wife's Dower, B. 2. C. 49. S. 32, 33, 34.

Felony by Statute. See Coin, Council, Imbecility, Foreign Priest, Jesuit, Rape, Force, Marriage, Bigamy, Mayhem, Records, Catle, Purveyors, Soldier, Mariners, Hunters, Gaoler, Egyptians, Powdike, Blackmail, Counterfeiters, Riots.

What Words in a Statute make an Offence Felony, B. 1. C. 40. S. 1.

Felony by Statute, not inquirable in the Tort B. 2. C. 10. S. 24.

Where the Law implies that the second Offence against a Statute, must be after a Conviction for the first, B. 1. C. 40. S. 2.

The Consequence of an Offence's being made Felony by Statute, B. 1. C. 40. S. 3.

The Felony ceases when the Statute is repealed, B. 1. C. 40. S. 4.

Felony by Statute, within the Benefit of the Clergy, unless expressly excluded, B. 2. C. 33. S. 12 to 17.

Feme-Covert. See Coverture and Wife.

Feræ Naturæ.

Larceny cannot be of Things Feræ Naturæ, but only of Things Domitæ Naturæ, B. 1. C. 33. S. 14, 15.

An Alphabetical Index to both Books.

Fiat.

A Fiat for a Certiorari, by whom to be signed, &c. B. 2. C. 27. S. 19.

Fiction, B. 2. C. 49. S. 36. See *Relation*.

Figures.

None but Roman Figures allowed in legal Proceedings, B. 2. C. 25. S. 79.

Filing.

Where there is no need of filing a Bill against an Appellee, B. 2. C. 23. S. 1.

Whether the Caption of an Indictment may be amended after it is filed, B. 2. C. 25. S. 62.

Whether a Record can be remanded after it is filed, B. 2. C. 27. S. 39. C. 3. S. 4.

Where the King's Bench will not suffer a Record removed by Certiorari to be filed, B. 2. C. 3. S. 4. C. 27. S. 16.

Fine.

Whether it may be assessed in the Absence of the Party, B. 2. C. 48. S. 11.

Whether several Defendants may be jointly fined, B. 2. C. 10. S. 5. C. 48. S. 12.

The Difference between Fine and Ransom, B. 2. C. 48. S. 13.

Whether a Fine can be altered after it is set, B. 2. C. 48. S. 14.

Where

An Alphabetical Index to both Books.

Where a Defendant shall not be discharged on his Fine, till he hath removed the Grievance complained of, B. 1. C. 75. S. 11. C. 76. S. 62.

Fines in the Leet, how to be recovered, B. 2. C. 10. S. 8. to 13.

The Justices may by Virtue of a Privy Seal, dispose of Part, B. 2. C. 25. S. 3.

Fish.

To be freely imported, &c. by Aliens, &c. B. 1. C. 80 S. 3.

How it may be ingrossed and retailed, B. 1. C. 80. S. 23, 24.

Flight.

Where it forfeits Goods, B. 2. C. 49. S. 11 to 15.

Forcible Marriage and Entry.

Where it is Felony to marry a Woman by Force, and how and where the Offender is to be indicted and tried, and who is a Principal, &c. B. 1. C. 42. B. 2. C. 25. S. 26.

Whether Force in regaining a Possession, were punishable at Law, B. 1. C. 64. S. 1.

Forcible Entry and Detainer, how punishable by 5 & 15 R. 2. B. 1. C. 64. S. 2, 3.

Record of Forcible Detainer, whether traversable, B. 1. C. 64. S. 5, 6.

Whether the Justice who records the Force, may fine or commit the Offender, B. 1. C. 64. S. 5, 6.

What

An Alphabetical Index to both Books.

What farther Provision against Forcible Entries, &c. is made by 8 H. 6. B. 1. C. 64. S. 7.

Copyholders, Lessees, Guardians, &c. whether intitled to a Restitution, &c. B. 1. C. 64. S. 9.

What shall be deemed an Entry within these Statutes, B. 1. C. 64. S. 11, 12.

What a Forcible one, B. 1. C. 64. S. 13, 14.

What Detainer shall be adjudged Forcible, B. 1. C. 64. S. 15.

As to what Possessions one may be Guilty of a Forcible Entry or Detainer, B. 1. C. 64. S. 16.

Who may be guilty of a Forcible Entry or Detainer, B. 1. C. 64. S. 17, 18.

The Caption of an Indictment founded on these Statutes, B. 1. C. 64. S. 19.

With what Certainty the Tenement, (B. 1. C. 64. S. 20.) and the Estate of the Party, (B. 1. C. 64. S. 21. B. 2. C. 25. S. 40.) is to be described.

A Repugnancy in setting forth the Offence, is fatal, B. 1. C. 64. S. 22. B. 2. C. 25. S. 41.

Whether the Indictment must shew that both the Entry and Detainer were Forcible, B. 1. C. 64. S. 23.

What Indictment warrants a Restitution, B. 1. C. 64. S. 24.

Adtunc & ibidem, B. 1. C. 64. S. 25.) illiterate, expulit, inde, manu forti, and Complaint, (B. 1. C. 64. S. 26.) whether necessary.

Of what Possessions Restitution shall be awarded, B. 1. C. 64. S. 27.

To

An Alphabetical Index to both Books,

To whom, B. 1. C. 64. S. 28.

Whether to a Disseisor, after a peaceable Entry by the Disseisee, B. 1. C. 64. S. 29.

By whom, and in what Manner it is to be awarded, B. 1. C. 64. S. 30, 31, 32.

Whether after Three Years Possession, B. 1. C. 64. S. 8. 33, 34, 35, 36, 37.

For what other Causes it may be staid, B. 1. C. 64. S. 38.

How it may be superseded, B. 1. C. 64. S. 39, 40.

Where and by whom a Re-restitution is grantable, and whether it be demandable ex rigore juris, B. 1. C. 64. S. 40, 41, 42.

Foreign.

What shall be said to be a foreign Nation, B. 1. C. 17. S. 33.

Felony in serving a foreign Prince, B. 1. C. 18. S. 7.

Foreign Victuals not within the Statutes of Forestalling, B. 1. C. 80. S. 24.

Foreign Popish Education how prohibited, B. 1. C. 15. S. 1, 2, 3.

The Offence of receiving Pension from a foreign Prince, B. 1. C. 22. S. 2.

Murder or Treason out of the Realm, where triable, B. 1. C. 31. S. 2. B. 2. C. 25. S. 30 to 35. C. 40. S. 2, 3. See Sea.

Foreign Pleas, how to be tried, B. 2. C. 40. S. 6.

Forest.

Where the Killing of a Trespassor in a Forest is justifiable, B. 1. C. 28. S. 10.

Whether

An Alphabetical Index to both Books.

Whether Persons imprisoned for Offences against the Forest, be replevisable, B. 2. C. 15. S. 20, 21, 22.

Forestalling. See Ingrossing and Regrating.

What a Forestalling, and how punishable at Common Law, B. 1. C. 80. S. 1, 2.

Who a Forestaller, Regrator, and Ingrosser by Statute, and how indictable, B. 1. C. 80. S. 6 to 16.

Provisions for a Tenant, not within the Statute against Forestallers, &c. B. 1. C. 80. S. 31.

Such Offences may be laid in any County, B. 1. C. 80. S. 33.

How indicted, B. 2. C. 25. S. 68.

Within what Time, and in what County a Suit for it be to be brought, B. 2. C. 26. S. 22, 24 to 36.

Forfeiture.

For what Breaches of Duty an Office shall be forfeited, B. 1. C. 66.

What Inheritances are forfeited at Common Law, by an Attainder of Treason or Felony, B. 2. C. 49. S. 1 to 6.

Where the King shall have the Year, Day, and Waste, B. 2. C. 49. S. 6.

What is liable to be forfeited as Part of a Personal Estate, B. 2. C. 49. S. 7.

On what Convictions, Inquests, Presentments, Defaults, &c. such Estate shall be forfeited, B. 2. C. 30. S. 7. C. 49. S. 9. to 13.

Where

An Alphabetical Index to both Books,

Where Goods are forfeited as Waifs, B. 2. C. 49. S. 14.

What is forfeited by a Felo de se, B. 1. C. 27. S. 5, 6.

What Hereditaments are forfeited for High Treason, by 26 & 33 of H. 8. B. 2. C. 49. S. 15 to 24.

Whether these Statutes are repealed by 1 Ma. B. 2. C. 49. S. 17.

Whether Estates in Tail, and Right to such Estates, shall be forfeited, B. 2. C. 49. S. 18, 20, 21, 24.

Whether Rights of Action or of Entry, (B. 2. C. 49. S. 3, 19.) or Powers of Revocation, (B. 2. C. 49. S. 22.) or Annuities or Offices shall be forfeited, B. 2. C. 49. S. 23.

A Saving against Corruption of Blood, &c. in a Statute, how to be construed, B. 2. C. 49. S. 25.

To what Time a Forfeiture shall relate, B. 1. C. 27. S. 7. C. 26. S. 5. B. 2. C. 46. S. 26. C. 49. S. 26, 27.

How it may be salved by Pardon, B. 1. C. 27. S. 7.

Whether one Indicted of Treason, &c. may sell his Goods, and how they shall be kept, &c. till the Trial, B. 2. C. 49. S. 28 to 32.

Where a Woman shall forfeit her Dower, B. 2. C. 49. S. 32, 33. 34.

What shall forfeit a Recognisance for the Peace or Good Behaviour, B. 1. C. 60. S. 14, 15, 16. C. 61. S. 3.

What shall forfeit a Leet, B. 2. C. 11. S. 4.

What shall forfeit a Recognisance by Bail, B. 2. C. 15. S. 41.

The

An Alphabetical Index to both Books:

The Limitation of a Forfeiture to the King, in a Statute, is mere Surplus, B. 1. C. 10. S. 20.

Forgery. See Counterfeiter.

Forgery at Common Law, B. 1. C. 70. S. 1, 2, 3.

Forgery by Statute, B. 1. C. 70. S. 4, &c.

Whether Forgery be indictable before Justices of Peace, B. 2. C. 8. S. 22.

Indictment for it, whether removable by Certiorari, B. 2. C. 27. S. 12.

Conviction of it, a good Cause of Challenge of a Juror or Witness, B. 2. C. 43. S. 16. C. 46. S. 16.

Forgery of a Writ, a good Ground for an Attachment, B. 2. C. 22. S. 25.

Whether he who suffers by it, can be a Witness to prove it, B. 2. C. 46. S. 19.

Franchise. See Liberty.

All Franchises must yield to the King's Prerogative, B. 2. C. 27. S. 9.

Franchises bound to repair their own Bridges, B. 1. C. 77. S. 2.

Where the Sheriff must execute a Writ in a Franchise, B. 2. C. 27. S. 9.

Frank-pledge, B. 2. C. 10. S. 1, 2.

Frauds.

An Alphabetical Index to both Books

Frauds. See Cheats.

Where a Fraud in respect of Goods delivered, &c. amounts to Felony, B. 1. C. 33. S. 2 to 11.

Fraus Legis, B. 1. C. 33. S. 9.

Freehold.

Larceny cannot be of Things fixed to the Freehold, B. 1. C. 33. S. 14.

What Freehold every Grand, (B. 2. C. 10. S. 29, 30. C. 25. S. 12 to 17.) and Petit Jury must have, B. 2. C. 43. S. 8 to 16.

Fresh Suit and Pursuit.

Where it excuses a Gaoler retaking a Prisoner, B. 2. C. 19. S. 3, 6, 7.

What fresh Suit is necessary in Appeals of Felony, B. 2. C. 23. S. 17, 30, 46.

What shall be esteemed a fresh Suit, B. 2. C. 23. S. 31.

By whom, and in what Manner it shall be inquired and adjudged, B. 2. C. 23. S. 32.

Fruit.

No Victual, B. 1. C. 80. S. 10.

Gaol.

An Alphabetical Index to both Books:

G Ame-houses, B. 1. C. 75. S. 4.

Gaol.

Whether a private Person may send a Man to Gaol, B. 2. C. 16. S. 2.

Who shall have the Custody of it, B. 2. C. 19. S. 4, 5.

Whether the King's Bench may commit to any Prison, B. 2. C. 3. S. 2.

What is a lawful Gaol, B. 2. C. 16. S. 3 to 8.

Gaol-Delivery. See Commission, Justices, Oyer, Assise.

The Form of the Commission, B. 2. C. 6. S. 1.
Over what Crimes and Persons such Justices have Jurisdiction, B. 2. C. 6. S. 2.

Whether they may receive an Appeal by Bill, B. 2. C. 6. S. 3. C. 23. S. 2. C. 24. S. 6.

Whether they may award Process into a foreign County, B. 2. C. 6. S. 4. C. 24. S. 8. C. 27. S. 1.

Their Power in punishing those who shall Bail those who are notailable, or otherwise not observe the Statutes concerning Bailment of Prisoners, B. 2. C. 6. S. 5, 6.

How they shall punish Sheriffs refusing to take Felons into their Custody, B. 2. C. 6. S. 7.

E

Where

An Alphabetical Index to both Books,

Where they may proceed against Persons convicted before other Justices, B. 2. C. 6. S. 8, 9, 10.

In what Town they are to hold their Sessions, B. 2. C. 6. S. 11.

Their Power in Relation to Bail, B. 2. C. 15. S. 32.

How they may reform the Panel of a Grand Jury, B. 2. C. 25. S. 21.

Whether they may award a Tales, B. 2. C. 41. S. 18.

Whether a Prisoner tried before them have a Right to a Copy of the Indictment, B. 2. C. 41. S. 19.

Their Power to write for the Certificate of a Conviction, B. 2. C. 33. S. 7, 8.

Whether Indictments before them may be removed by Certiorari, B. 2. C. 27. S. 12.

Whether a Panel may be returned before them on a bare Award, B. 2. C. 41. S. 1.

Whether they can order a Jury to be returned immediately, B. 2. C. 41. S. 4, 19.

They may sever a Panel, B. 2. C. 41. S. 8.

Gaoler.

Where he may justify Killing his Prisoner, B. 1. C. 28. S. 8.

He is Guilty of Felony, if he compel a Prisoner to become an Appellor, B. 1. C. 51.

For what Contempts and Oppressions, he is liable to an Attachment, B. 2. C. 22. S. 18, 19.

How punishable for refusing to receive a Felon, B. 2. C. 6. S. 7.

An Alphabetical Index to both Books.

Gate.

*Where justifiable in the Highway, B. 1. C. 75.
S. 6, 9. C. 76. S. 30.*

General Issue, B. 2. C. 38. See Issue.

Whether it must be pleaded in justifiable Homicide, B. 1. C. 28. S. 2.

A Parish indicted for the Highways, cannot give in Evidence on the General Issue, that a private Person is bound to the Repairs, B. 1. C. 76. S. 7.

Where Usury may be given in Evidence on the General Issue, B. 1. C. 82. S. 4.

Whether it be Evidence on the General Issue, that a qui tam is brought in an improper County, or after the Time required by Statute, or that the Defendant is within a Proviso of the same Statute, or helped by a subsequent one, B. 2. C. 26. S. 24, 34, 48.

What a good General Issue in a qui tam, B. 2. C. 26. S. 47.

What Pleas are consistent with it, B. 2. C. 23. S. 78, 85, 86. C. 25. S. 20. C. 37. S. 46. C. 26. S. 44.

Where Son Assault Demesne may be given in Evidence on the General Issue, B. 2. C. 46. S. 37.

Gentleman. See Esquire.

An Alphabetical Index to both Books,

Glass-house.

Where a Nuisance, B. 1. C. 75. S. 7.

God. See Act of God, and Religion.

Gold. See Coin, Money, and Silver.

Goods.

Where forfeited for Felony or Treason, B. 2. C. 49. S. 7. to 15.

What shall be done with a Felon's Goods before Conviction, and whether he may sell them, B. 2. C. 49. S. 28, 29, 30, 31.

What are such Goods, the Stealing whereof is Larceny, B. 1. C. 33. S. 14 to 19.

The Import of the Forfeiture of Goods in a Statute, B. 2. C. 10. S. 8.

Indictment for stealing Bona Ecclesiar, B. 2. C. 25. S. 44.

With what Certainty the Goods stolen are to be set forth in an Indictment, B. 2. C. 25. S. 47.

Government. See Contempt.

Grand Larceny, B. 1. C. 33. S. 1, 19.

Grand Sessions.

An Acquittal there pleadable to an Indictment of Death in England, B. 2. C. 25. S. 28. C. 35. S. 9.

Grand Jury. See Jury.

Habeas

An Alphabetical Index to both Books.

Habeas Corpus.

THE Habeas Corpus *Act*, B. 2. C. 15.
S. 9. to 14.

Where Persons may be bailed on an Habeas Corpus, B. 2. C. 15. S. 9, 10, 22.

The Truth of the Return of it not to be controverted, B. 2. C. 15. S. 37.

It brings an inferior Court into Contempt for proceeding after it, B. 2. C. 22. S. 16.

Gaoler how punishable for disobeying it, B. 2. C. 22. S. 18.

Where it must be signed by a Judge, B. 2. C. 27. S. 14.

Hawks.

Where it is Felony to steal them, or their Eggs,
B. 1. C. 33. S. 15, 16.

Hearsay.

Whether Evidence, B. 1. C. 47. S. 11.

Hedges.

Hedges near the Highways, by whom, and in what Manner to be plashed, &c. B. 1. C. 76.
S. 33, 35.

An Alphabetical Index to both Books,

Heir. See Corruption, &c.

Where liable to the Ancestor's Forfeiture, for Recusancy, B. 1. C. 10. S. 28, 29.

Where barred by the Corruption of the Blood of the Person through whom he is to derive his Descent, B. 2. C. 49. S. 35.

Where he is intitled to an Appeal of Death, and how he must bring it, B. 2. C. 23. S. 22 to 27.

Heresy.

What is Heresy, B. 1. C. 2. S. 1.

Who have Jurisdiction over it, B. 1. C. 2. S. 2. &c.

Whether a Heretick shall have his Clergy, B. 2. C. 33. S. 2, 72.

Highway.

What is a Highway, B. 1. C. 76. S. 1, 2.

How it may be changed, B. 1. C. 76. S. 3.

By whom it is to be repaired of common Right, B. 1. C. 76. S. 4.

Where private Persons may be bound to repair it by Inclosure, (B. 1. C. 76. S. 5.) or Prescription, B. 1. C. 76. S. 6.

Whether Advantage can be taken hereof, on the General Issue, B. 1. C. 76. S. 7.

Who are compellable by Statute, to work on the Repairs of the Highways, B. 1. C. 76. S. 8, 9, 10.

Whether Clergymen are exempted, B. 1. C. 76. S. 11.

How

An Alphabetical Index to both Books.

How far a Man is chargeable as a Keeper of a Draught, or as an Owner of Land, B.

1. C. 76. S. 11.

Whether the doing the full Statute Work, be a Defence on an Indictment at Law, B. 1. C. 76. S. 12.

How a Rate for the Repairs of the Highways, may be made by the Sessions of the Peace, B. 1. C. 76. S. 12.

How the Surveyors, laying out their Money, may be reimbursed, B. 1. C. 76. S. 13.

Fines for not repairing the Highways, how to be applied, B. 1. C. 76. S. 14, 46

Inhabitants, on whom more is levied than their Proportion of a Fine, how to be reimbursed, B. 1. C. 76. S. 14.

Trust-Lands, for the Repairs of Highways, to be inquired into by Justices of Peace, B. 1. C. 76. S. 15.

Highways how to be enlarged, B. 1. C. 76. S. 16 to 22.

Appeal from the Order of Justices of Peace, concerning such Enlargement, and from an Inquest in a quod damnum, B. 1. C. 76. S. 21.

Surveyors, how to be appointed, B. 1. C. 76. S. 22.

How to execute their Office by viewing the Roads, presenting and removing Annoyances, (B. 1. C. 76. S. 23.) appointing fix Work Days, (B. 1. C. 76. S. 24.) digging for Stones, &c. (B. 1. C. 76. S. 25.) turning Water-courses, making Sluices and Ditches, &c. B. 1. C. 76. S. 26.

An Alphabetical Index to both Books.

Penalties on Surveyors, for Neglects of their Duty, B. 1. C. 76. S. 27, 29.

Special Sessions for the Highways, B. 1. C. 76. S. 28.

Nuisances to Highways, by Hedges or Ditches overthwart it, or Logs in it, B. 1. C. 76. S. 30.) or Foulness of the adjoining Ditches, or Boughs hanging over it, B. 1. C. 76. S. 31.

Such Nuisances, how to be removed by the Owners of the Lands, B. 1. C. 76. S. 31 to 37.

Hedges how to be plashed, (B. 1. C. 76. S. 33.) Trees and Bushes, and Soil, how to be removed, B. 1. C. 76. S. 35.

Penalty for removing Things set up for the Security of the Highways, B. 1. C. 76. S. 37.

Travelling Waggons, with how many Beasts to be drawn, (B. 1. C. 76. S. 38.) with Wheels of what Breadth, B. 1. C. 76. S. 39, 40, 41.)

Nuisances to Highways where indictable, B. 1. C. 76. S. 42.

Presentments to be in the proper Counties, and not removable by Certiorari, B. 1. C. 76. S. 48, 49.

Presentments by Surveyors, (B. 1. C. 76. S. 43.) by Justices of Peace, B. 1. C. 76. S. 44.

Such Presentments, whether traversable, B. 1. C. 76. S. 45, 52.

Penalties for not working, (B. 1. C. 76. S. 47.) and Assessments how to be levied, B. 1. C. 76. S. 47.

Prosecution to be within six Months, B. 1. C. 76. S. 50.

Appeal

An Alphabetical Index to both Books.

Appeal to the Quarter-Sessions, B. 1. C. 76. S. 51.

The Form of an Indictment concerning the Highways, B. 1. C. 76. S. 54. B. 2. C. 25. S. 43.

Whether such Indictment may be quashed, B. 1. C. 76. S. 53, &c.

Whether the Defendant shall be discharged by submitting to a Fine, B. 1. C. 76. S. 62.

Whether an Indictment concerning the Highways, be removable by Certiorari, B. 2. C. 27. S. 16.

Where a Distress may be lawfully taken in a Highway, B. 2. C. 10. S. 10

Highwayman.

Apprehender of him, how rewarded, B. 2. C. 12. S. 9.

Robbery on the Highway ousted of Clergy, B. 2. C. 33. S. 47, 48 to 55 and S. 66.

Homicide. See Manslaughter and Murder.

What amounts to Homicide, B. 1. C. 27. S. 1.

Justifiable Homicide must be owing to Necessity, B. 1. C. 28. S. 2.

Whether it may be pleaded Specially, B. 1. C. 28. S. 3.

Where Homicide may be justified in the Execution or Advancement of Justice, B. 1. C. 28. S. 3 to 13.

Where it may be justified in Defence of a Man's self, or of his Master, &c. B. 1. C. 28. S. 13, &c.

Homicide

An Alphabetical Index to both Books.

Homicide per infortunium, (B. 1. C. 29. S. 1 to 5. C. 31. S. 16.) or *se defendendo*, (B. 1. C. 29. S. 5, 6. C. 27. S. 3. though excusable, not bailable, B. 1. C. 29. S. 7.

No Judgment to be given on a Conviction of either, B. 2. C. 48. S. 5.

Whether Homicide be bailable, and how, B. 2. C. 15. S. 17, 23, 29, 31, 32.

No Accessories to Homicide per infortunium, B. 2. C. 29. S. 15.

Persons Guilty of Homicide per infortunium, or se defendendo, how to be pardoned, B. 2. C. 37. S. 2.

In what Cases Homicide is excluded from Clergy, B. 2. C. 33. S. 36, 37.

What Fee is due to a Coroner, on taking an Inquest of it, B. 2. C. 9. S. 25.

In what County a Man is indictable for a Homicide in one County, from a Stroke in another, B. 2. C. 25. S. 24.

Homine replegiando.

Where Persons may be replevied by this Writ, B. 2. C. 15. S. 15 to 27.

Hops.

Whether a Victual, B. 1. C. 80. S. 10.

Horses.

What Horses not to be kept by Papists, B. 1. C. 14. S. 4.

Horse.

An Alphabetical Index to both Books.

Horse-Stealers.

Excluded from Clergy, B. 2. C. 33. S. 39.

Where intituled to a Pardon, B. 2. C. 37. S. 5.

Hour.

Whether necessary to be set forth in an Appeal or Indictment, and whether material on Evidence, B. 2. C. 23. S. 56. C. 25. S. 49.

House.

Larceny and Robbery in it, where excluded from Clergy, B. 2. C. 33. S. 40 to 66.

What is such a House that Burglary, (B. 1. C. 38. S. 7, 8, 9, 10.) or Arson, (B. 1. C. 39. S. 2, 3.) may be committed in it.

Whether a Chamber in an Inn of Court, or a Lodging, come under the Notion of a Dwelling House, B. 1. C. 38. S. 8, 9. B. 2. C. 33. S. 64.

It is lawful to assemble Friends in Defence of one's House, B. 1. C. 63. S. 7. C. 65. S. 10.

House-breaker. See Clergy and Burglary.

Whether indictable before the Coroner, B. 2. C. 9. S. 17.

Where intituled to a Pardon, B. 2. C. 37. S. 5.

House of Correction. See Correction.

Hue

An Alphabetical Index to both Books.

Hue and Cry.

How to be raised and followed, &c. B. 2. C. 12. S. 2, 3.

Whether it justify an Arrest, B. 2. C. 12. S. 5,

Hunters.

Hunting in Disguises, where Felony, B. 1. C. 49.

Husband. See Wife.

Whether he may have Sureties of the Peace against his Wife, and e converso, B. 1. C. 60. S. 2.

Husband and Wife but one Person, therefore not suable alone by Writ of Conspiracy, B. 1. C. 72. S. 6.

Husband or Wife cannot be Witnesses for or against one another, B. 2. C. 46. S. 13.

Whether he can have Damages for a malicious Appeal against his Wife, B. 2. C. 23. S. 95.

Whether he may receive his Wife, having been Guilty of Felony, B. 2. C. 29. S. 19.

I *Dentity. See Time.*

Idiot.

Cannot bring an Appeal, (B. 2. C. 23. S. 16.)
nor be an Approver, B. 2. C. 24. S. 2.

Jeofails.

An Alphabetical Index to both Books:

Jeofails.

Extends to Informations in the Nature of a Quo warranto, B. 2. C. 26. S. 12.

Jesuit.

Felony in harbouring him, B. 1. C. 18. S. 8.

Reward for apprehending him, B. 1. C. 13^d S. 2.

Jew.

Whether he can demand Sureties of the Peace, (B. 1. C. 60. S. 2.) or the Benefit of the Clergy, B. 2. C. 33. S. 2.

Whether he can be a Witness, and how he shall be sworn, B. 2. C. 46. S. 21.

Ignorance.

No Excuse where a Man ought to inform himself, B. 2. C. 15. S. 6.

Ignoti.

Indictment, &c. de morte, &c. ignoti, B. 2. C. 23. S. 51. C. 25. S. 44.

Illicite.

Whether a necessary Word in an Indictment, B. 1. C. 64. S. 26. B. 2. C. 25, S. 61.

Imbe-

An Alphabetical Index to both Books.

Imbezilment.

Felony to imbezil the King's Armour or Vi-
tuals, B. 1. C. 18. S. 6.

Imbezilment of Yarn or Wool, where Felony,
B. 1. C. 33. S. 5.

Impeachment.

A Pardon not pleadable to it, B. 2. C. 27. S.
33.

Whether Persons impeached, be bailable, B. 2.
C. 15. S. 35.

Implication. See Intendment, Construction,
and Indictment.

Importation.

Of Victuals by Aliens, B. 1. C. 80. S. 3.

Foreign Victuals imported, how far within the
Laws against Forestalling, B. 1. C. 80. S.
3, 24.

Impossibility.

Whether it viciates an Indictment, B. 2. C. 25.
S. 41, 49.

Impostures. B. 1. C. 5. S. 3.

Inclosure.

How it binds a Man to repair the Highway,
B. 1. C. 76. S. 5.

Inde

An Alphabetical Index to both Books:

Inde, B. 1. C. 64. S. 26.

Indictment.

The Difference between an Indictment, Presentment, and Inquisition, B. 2. C. 25. S. 1.

Whether a Bill of Indictment can be found Specially or Conditionally, or for Part. B. 2. C. 25. S. 2.

How far it is the Suit of the King, and how far the Party may be relieved by it, B. 2. C. 25. S. 3.

What Offences are indictable, B. 2. C. 25. S. 4.

Where one may be tried without an Indictment, on being taken with the Mainer, B. 2. C. 25. S. 5.

Where on a Verdict, B. 2. C. 25. S. 6.

Where on an Appeal determined, B. 2. C. 25. S. 7, 8.

Whether one may be so tried in any other Case, B. 2. C. 25. S. 10.

Whether a Man shall be tried on an Indictment while an Appeal is depending, B. 2. C. 25. S. 11.

What ought to be the Number and Quality of the Indictors, and how the Party indicted shall take Advantage of their Want of a legal Qualification, B. 2. C. 25. S. 12.

In what Place the Offence indicted must arise, B. 2. C. 25. S. 22 to 36.

Indictment of Offences arising in different Counties, B. 2. C. 25. S. 23, 24, 25, 26, 35.

Of Offences in Wales, B. 2. C. 25. S. 27, 28.

Of Offences on the Seas, B. 2. C. 25. S. 29.
Of

An Alphabetical Index to both Books
Of Treasons beyond Sea, B. 2. C. 25. S. 38
to 35.

Where the Want of Words of Art is fatal in
an Indictment, B. 2. C. 25. S. 36.

With what Certainty the Manner of the Fact is
to be set forth, B. 2. C. 25. S. 37.

With what Certainty the Tenement entered upon,
(B. 1. C. 64. S. 20.) and the Estate of the
Party, (B. 1. C. 64. S. 21.) is to be described
in an Indictment of Forcible Entry.

How the Nuisance in an Indictment of the High-
ways, B. 1. C. 76. S. 54, 56, 60.

Whether a Disjunctive Charge is sufficient,
B. 2. C. 25. S. 38.

Whether an Indictment in general Terms, with-
out alledging a particular Fact, be sufficient,
B. 2. C. 25. S. 39.

Whether an Indictment, by Way of Recital, be
sufficient, B. 2. C. 25. S. 40.

Whether the Omission of any thing material in
the Description of the Substance, or the Man-
ner of the Crime, can be supplied by Intend-
ment, B. 2. C. 25. S. 40.

Where an Indictment shall be vicious, for Re-
pugnancy, Absurdity, or Impossibility, &c. B.
1. C. 64. S. 22. B. 2. C. 25. S. 41, 42, 51,
65, 67.

How the Defendant is to be described, B. 2. C.
25. S. 43.

How other Persons mentioned in the Indictment,
B. 2. C. 25. S. 44, 45, 46.

How the thing wherein the Offence was com-
mitted, B. 2. C. 25. S. 47, 48.

Whether an Indictment of Larceny must shew
who had the Property of the Thing stolen,
and the Value thereof, B. 2. C. 25. S. 48.

Whether

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S. 7

An Alphabetical Index to both Books.

Whether, and in what Manner, the Hour, Day, and Year of the Offence must be set forth,

B. 1. C. 64. S. 25. B. 2. C. 25. S. 49, 50.

In what Manner the Place of the Offence must be alledged, B. 2. C. 25. S. 51, 52.

Where bad Latin vitiates an Indictment, B. 2. C. 25. S. 53, 54, 55.

Where an Indictment may be joint and several, B. 2. C. 25. S. 56.

Whether vi & armis, (B. 2. C. 25. S. 57.) contra pacem, (B. 2. C. 25. S. 58.) contra coronam, (B. 2. C. 25. S. 59.) in contemptum Regis, (B. 2. C. 25. S. 60.) or illicite, be necessary, B. 2. C. 25. S. 61.

Whether an Indictment be amendable, B. 2. C. 25. S. 62, 63.

Whether an Indictment on the Statute must recite it, B. 2. C. 25. S. 64.

What Mis-recitals are fatal, B. 2. C. 25. S. 64, 65, 66, 67.

How far the Words of the Statute must be pursued, and with what Certainty the Defendant must be brought within its Purview, B. 1. C. 30. S. 5. C. 42. S. 3. C. 69. S. 14, 15. C. 80. S. 7, 12, 13, 15. B. 2. C. 25. S. 68 to 73.

Whether it be necessary to shew that the Defendant is not within the Proviso of the Statute, B. 2. C. 25. S. 71.

What Omissions are helped by the Conclusion contra formam Statuti, B. 2. C. 25. S. 72.

Whether an Indictment, with such Conclusion, can be maintained as an Indictment at Common Law, B. 1. C. 30. S. 4. B. 2. C. 25. S. 73.

G

Where

An Alphabetical Index to both Books,

Where it is proper to conclude contra formam Statuti, and where contra formam Statutorum, B. 2. C. 25. S. 74.

How the Caption must shew the Jurisdiction of the Court, B. 2. C. 25. S. 75, 76, 77.

How it must set forth the Legality of the Indictors, B. 2. C. 25. S. 78.

How the Year and Day, (B. 2. C. 25. S. 79.) and Place, (B. 2. C. 25. S. 80.) of the Finding of the Indictment.

Whether two Witnesses are necessary at Law, to an Indictment of Treason, B. 2. C. 25. S. 81.

Where two Witnesses are required by Statute, to Indictments of Treason, &c. B. 2. C. 25. S. 82.

How Indictments may be quashed, B. 2. C. 25. S. 89, 90.

How they are to be pleaded to, B. 2. C. 25. S. 91.

Infamy.

What is such Infamy as disables a Man from being a Witness, B. 2. C. 46. S. 16, 17, 18.

Infant.

How far liable to a criminal Prosecution, B. 1. C. 1. S. 1, 5. C. 64. S. 18.

Murder to kill an Infant in ventre sa mere, B. 1. C. 31. S. 5.

How an Infant is to find Sureties of the Peace, B. 1. C. 60. S. 3.

Whether

An Alphabetical Index to both Books.

Whether he must assist in suppressing Riots, B.

1. C. 65. S. 18.

An Appeal of Felony may be brought by or against him, B. 2. C. 23. S. 14.

Whether he can be a Witness, B. 2. C. 46. S. 21.

Inferior Court. See Contempts.

Infidel.

Who is such an Infidel as cannot be a Witness,

B. 2. C. 46. S. 21.

Information.

Informations merely at the Suit of the King, for what Offences to be exhibited, B. 2. C. 26. S. 1, 2.

What Certainty is required in such Information, B. 2. C. 26. S. 3.

Informations in the King's Bench, how to be moved for, and in what Cases usually granted, B. 2. C. 26. S. 4 to 12.

What Process shall go on such Information, B. 2. C. 27. S. 4, 8.

Where the Defendant shall have Costs, B. 2. C. 26. S. 4, 5, 9, 10, 11.

Where an Information qui tam lies, B. 2. C. 26. S. 13.

The Form of such Information, B. 2. C. 26. S. 14 to 20.

Where Suits on Penal Statutes must be by Information, or original Action, B. 1. C. 10. S. 20.

An Alphabetical Index to both Books;

In what Courts, and in what County, such Informations are to be brought, B. 2. C. 26.

S. 21 to 30. B. 1. C. 80. S. 32, 33.

Within what Time, B. 2. C. 26. S. 30 to 36.

What Affidavit is required, as to the Place and Time in which the Offence arose, B. 2. C. 26. S. 27 to 35.

Who are disabled to sue on Penal Statutes, B. 2. C. 26. S. 36.

Where the Informer may be Nonsuit, B. 2. C. 26. S. 37.

Where the Informer and Defendant may appear by Attorney, B. 2. C. 38 to 41.

Where the Informer shall have Costs, and where he shall pay them, B. 2. C. 2. S. 41, 42.

Whether he can wage his Law, cast a Protection, B. 2. C. 26. S. 43.

General Issue, how to be pleaded, B. 2. C. 26. S. 44, 47.

Not to be pleaded with a Special Plea, B. 2. C. 26. S. 44.

Another Action depending, where a good Plea, B. 1. C. 10. S. 23. B. 2. C. 26. S. 45.

Plea of Pardon, Release, and Autrefoits Attaint or Convict, B. 2. C. 26. S. 46.

Where the Defendant may give in Evidence a Proviso, in a former Statute, or Special Matter, &c. B. 2. C. 26. S. 48.

How the Informer is to reply to the Defendant's Plea, B. 2. C. 26. S. 49.

How the Issue is to be joined, B. 2. C. 26. S. 50.

Where the Trial is to be, B. 2. C. 26. S. 51.

How

An Alphabetical Index to both Books.

How the Verdict and Judgment are to be given,
B. 2. C. 26. S. 52, 53.

The Penalty of Compounding a Penal Statute,
B. 2. C. 26. S. 54, 55.

Power of dispensing with Penal Statutes, &c.
not grantable over, B. 2. C. 26. S. 56.

Whether an Information can be quashed, B. 2.
C. 25. S. 89.

Infortunium. See *Homicide*, B. 1. C. 29.

Ingrossing. See *Forestalling, Victual.*

Who an Ingrosser, B. 1. C. 80. S. 1, 9.

Inlargement.

Highways, how to be enlarged, B. 1. C. 76. S.
16 to 22.

Inn. See *Victuals and Alehouse.*

Where indictable as a Nuisance, B. 1. C. 78.
S. 1.

Where for refusing to entertain Guests. B. 1.
C. 78. S. 2.

Whether it require a Licence for its Erection,
B. 1. C. 78. S. 3.

Whether it be lawful to enlarge an old Inn, or
set up a new one, B. 1. C. 78. S. 3.

Inn-keepers must sell their Victuals at reason-
able Rates, B. 1. C. 78. S. 5. C. 80. S. 3.

May sell Butter and Cheese by Retail, B. 1. C.
80. S. 5.

An Alphabetical Index to both Books,

Inn of Court.

Whether a Chamber in it can be called a Mansion-house, B. 1. C. 38. S. 9.

Inquest of Death. See Coroner.

Inquest of Office. See Office.

To try whether a Man stand mute of Malice, (B. 2. C. 30. S. 2, 8.) or whether a Criminal be a Lunatic, B. 1. C. 1. S. 2.

Inquest in the Torn or Leet, B. 2. C. 10. S. 28. &c.

Inquisition, B. 2. C. 25. S. 1.

Inquisition of Death. See Coroner and Traverse.

Insidiatores viarum, B. 2. C. 25. S. 39. C. 33. S. 10.

Insufficient. See Sufficient.

Insufficient Sureties are as none, B. 2. C. 15. S. 3, 4.

What is insufficient Bail, and taking of it how punishable, B. 2. C. 15. S. 4, 5. See Bail.

Intendment.

Cannot supply the Want of Certainty in an Appeal, Indictment, or Verdict, B. 2. C. 23. S. 53. C. 25. S. 40. C. 47. S. 6.

Inten-

An Alphabetical Index to both Books.

Intention.

Cannot amount to Felony, though it may to Treason, B. 1. C. 17. S. 4. C. 25. S. 3.
Whether the Lawfulness of the Intent excuse a Riot, B. 1. C. 65. S. 7.
What Intention is requisite in Burglary, and what in a Riot, B. 1. C. 38. S. 11. C. 65. S. 1, 3.

Interest.

What Interest justifies a Man in maintaining or defending another's Suit, B. 1. C. 83. S. 9 to 13.
Where a Man is esteemed so far interested in a Cause, that he cannot be a Witness, B. 2. C. 46. S. 19, 20.

Interrogatories.

In what Manner to be exhibited, &c. on an Attachment, B. 1. C. 22. S. 1.

Joinder of Counties.

Where a Trial shall be by a Jury returned from two Counties, B. 2. C. 23. S. 18. C. 29. S. 28. C. 40. S. 1.

Joint Fine. See Fine and Several.

An Alphabetical Index to both Books.

Joint Indictment, Information and Verdict.
See *Several*.

Where some may be Acquitted, and some found Guilty on a joint Prosecution, B. 2. C. 47. S. 5.

Jointure. See *Dower*.

Joint Plea.

Whether the Defendants in an Information, may plead jointly Not guilty, &c. B. 2. C. 26. S. 47, 52.

Ireland.

Not within the Realm of England, B. 1. C. 17. S. 33.

Forgery of a Lease of Land there not within 5 Eliz. B. 1. C. 70. S. 9.

Treason there not triable by 35 H. 8. B. 2. C. 25. S. 33.

Whether Irish Bishop be a good Addition, B. 2. C. 23. S. 72.

Irish Peer, where triable, and by whom, B. 2. C. 25. S. 33. C. 44. S. 6.

Irons.

Whether a Gaoler be punishable for keeping a Prisoner in Irons, B. 2. C. 22. S. 18.

Whether a Prisoner shall be Arraigned in Irons, B. 2. C. 28. S. 1.

Irony.

An Alphabetical Index to both Books.

Irony.

Whether it can make a Writing libellous, B. 1. C. 73. S. 3.

Issue. See General Issue.

Where well joined, B. 2. C. 38. S. 1. C. 26. S. 50.

Whether necessary to be expressly joined on the Part of the King, B. 2. C. 38. S. 2.

Judges. See Court, Deputy, and Jurisdiction.

How to be consulted at the Trial of a Peer, B. 2. C. 44 S. 14.

The Offence of striking, or reproaching a Judge, B. 1. C. 21. S. 2, 5, 8, 9.

Where an Attachment is grantable against the Judge of an inferior Court, B. 2. C. 22. S. 14, 15, 16. C. 1. S. 7.

Whether the Judge can be a Witness, B. 2. C. 46. S. 14.

How punishable for Bribery, B. 1. C. 67.

Whether punishable for what he does openly in a Court of Record, B. 1. C. 72. S. 4.

Not within 8 Hen. 6. which makes imbeziling Records Felony, B. 1. C. 45. S. 2.

Judicial Office, whether grantable for Life, B. 2. C. 1. S. 1.

Where the act of one is effectual for all, B. 2. C. 1. S. 2. C. 9. S. 24.

Judges are not compellable to give their Opinion before hand, B. 2. C. 1. S. 7.

Who-

An Alphabetical Index to both Books.

Whoever is Judge of the Offence may bail the Offender, B. 2. C. 15. S. 14, 27.

Judgment. See *Autrefoits*, *Acquit*, &c. and *Attainder*.

Not to be altered where the Law has fixed it, B. 2. C. 48. S. 2.

Judgment in Treason, (B. 2. C. 48. S. 3.) in capital Felony, (B. 2. C. 48. S. 4.) in Premunire, (B. 2. C. 48. S. 6.) in Mispri-
son of Treason, (B. 2. C. 48. S. 7.) in Perjury, (B. 1. C. 69. S. 11, 12) in For-
gery, B. 1. C. 70. S. 5.) in Conspiracy, (B. 1. C. 72. S. 7.) of Pain Fort & dure, (B. 2. C. 30. S. 6.) in qui tam, B. 2. C. 26. S. 53.

No Judgment in Homicide se defendendo, or per infortunium, B. 2. C. 48. S. 5.

How a Judgment shall be entred on an Acquittal, B. 2. C. 48. S. 8.

How on the Plea of a Release, B. 2. C. 48. S. 8.

In what Cases, and in what Manner Judgment is to be given at the Discretion of the Court, B. 2. C. 48. S. 9, 10.

What Judgment may be given in Absence of the Defendant, B. 2. C. 48. S. 11.

How Defendants are to be fined, B. 2. C. 48. S. 12, 13, 14.

How a Man is to be outlawed, B. 2. C. 48. S. 15, 16.

How such Judgment may be reversed, B. 2. C. 48. S. 17. C. 50. S. 1, 4, 5, 6, 7.

Whether a Judgment be necessary in every Attainder, B. 2. C. 48. S. 19.

How

An Alphabetical Index to both Books.

How far it is to be pursued by the Execution
B. 2. C. 50. S. 4.

Where it may be saved by an Award of Transportation, B. 2. C. 33. S. 89.

For what Faults, and in what Manner it may be arrested, B. 2. C. 48. S. 1. C. 25. S. 90.

Whether the same shall be given against a Peer and Commoner, and whether the same shall be given in all Cases, B. 2. C. 48. S. 2.

Jurisdiction.

The Proceedings of a Court that has no Jurisdiction, are void, (B. 1. C. 28. S. 3. C. 35. S. 9. C. 69. S. 4. B. 2. C. 13. S. 8.) C. 15. S. 23. C. 50. S. 2.

Where it is Murder to put a Man to Death, without a Jurisdiction, B. 1. C. 31. S. 20.

Whether Conspiracy lie for a malicious Prosecution, in a Court which has no Jurisdiction, B. 1. C. 72. S. 3.

All Jurisdiction is derived from the Crown, B. 2. C. 1. S. 1.

Whether it be always libellous to accuse a Man in a Court which has no Jurisdiction, B. 1. C. 73. S. 7.

How far a Statute in giving a Justice a Jurisdiction of an Offence, gives him a Power to bring the Party before him, B. 2. C. 10. S. 6.

How

An Alphabetical Index to both Books.

How a Judge is punishable for proceeding without Jurisdiction, B. 2. C. 22. S. 14.

A Jurisdiction shall not be presumed, where it doth not appear, B. 2. C. 10. S. 8.

How an Avowry, &c. grounded on the Act of an inferior Court, must shew that the Offence arose within its Jurisdiction, B. 2. C. 10. S. 8.

Whether a Qui tam in a Court, which has no Jurisdiction, makes the Informer liable to Costs, B. 2. C. 26. S. 42.

Whether such Suit be within 18 Eliz. which prohibits the compounding Prosecutions on Penal Statutes, B. 2. C. 26. S. 55.

Jurors and Jury. See Verdict, Inquests, Concealments, and Challenge.

From what County a Jury is to be returned, and whether in all Cases, from that in which the Offence arose, B. 2. C. 40.

Where a Jury may be returned by a bare Award, without Writ, B. 2. C. 41. S. 1, 2.

In what Manner Process against Jurors, is to be returnable, B. 2. C. 41. S. 3, 4, 5, 6.

Where it may be joint or several, B. 2. C. 41. S. 7, 8.

The Nature of Process, by Proviso, B. 2. C. 41. S. 9.

Where there shall be a Tales, and the Nature of the Process for that Purpose, B. 2. C. 41. S. 10. &c.

Where the Juror shall be returned into the Court before the Inquest shall be taken, B. 2. C. 41. S. 19.

Where

An Alphabetical Index to both Books:

Where the Prisoner shall have a Copy of the Panel, B. 2. C. 41. S. 19.

Before what Court the Jury is to be returned, B. 2. C. 42.

For what Causes they may be challenged, B. 2. C. 43. See Challenges.

Where a Trial shall be by a Jury Half Denizens, Half Aliens, B. 2. C. 43. S. 23, &c.

The Offence of threatening a Juror, &c. B. 1. C. 21. S. 10.

The Offence of a Grand Juror discovering the King's Evidence, B. 1. C. 21. S. 11. C. 32. S. 1.

Whether a Grand or Petit Jury, may find a Bill in Part true, and in Part false, B. 1. C. 64. S. 23, 38. B. 2. C. 25. S. 2.

Whether a Juror be punishable for what he does as such, B. 1. C. 72. S. 4. B. 2. C. 22. S. 10 to 14.

Where he may be Guilty of Maintenance, B. 1. C. 83. S. 5.

The Offence of giving him Money for his Verdict, and of his receiving it, &c. B. 1. C. 85.

What Qualifications are required for Jurors in the Torn or Leet, &c. B. 2. C. 10. S. 30.

What for Indictors before other Courts, B. 2. C. 25. S. 12 to 22.

How a Person indicted, may take Advantage of the Indictors, being unduly returned, B. 2. C. 25. S. 17 to 21.

How the Panel may be reformed by the Court, B. 2. C. 25. S. 21.

Whether a Juror can be a Witness, B. 2. C. 46. S. 14.

Whether

An Alphabetical Index to both Books,
*Whether they be ordered to go out to reconsider
their Verdict, B. 2. C. 47. S. 7.*

Justices.

See Court, Oyer, Gaol-Delivery, Assise, Peace,
King.

What Justices can be made by the King only,
B. 2. C. 5. S. 1.

*How their Power may be suspended, revived,
or determined, B. 2. C. 5. S. 3.*

*How it may be determined by the Demise of the
King, B. 2. C. 1. S. 3, 4.*

How by Acceptance of a Name of Dignity,
B. 2. C. 5. S. 6.

*How by holding a Session, without adjourning
it, B. 2. C. 5. S. 7.*

*How by the Grant of a new Commission, B. 2.
C. 5. S. 8, 9, 10.*

*How they are to open and adjourn their Commis-
sion, B. 2. C. 5. S. 11, 12.*

*What is to be done on their Death, after an
Indictment taken before them, B. 2. C. 5.
S. 14.*

*In what County they are to sit, B. 2. C. 5. S.
16.*

*Whether one Justice have Power over another
in the same Commission, B. 2. C. 8. S. 25.*

Justicier, B. 2. C. 3. S. 1.

Justification. See Homicide, Suspicion, and
General Issue.

*Going in a new Highway, how justified, B. 1.
C. 76. S. 3.*

An Alphabetical Index to both Books.

K *Alendar.* See *Computation.*

Killing. See *Murder.*

Kindred. See *Maintenance and Champerty.*

King. See *Commission, Counsel, Soldier, Witness.*

For Contempts against his Courts, Prerogative, Person, or Title, see Contempts.

All Jurisdiction is derived from him, yet he cannot alter the known Powers of his ancient Courts, nor make a new judicial Commission, unwarranted by Precedents, B. 2. C. 1. S. 1. C. 5. S. 2.

At Law all Patents were determined, and legal Proceedings discontinued by his Demise, B. 2. C. 1. S. 3.

This Mischief, how remedied by Statute. B. 2. C. 1. S. 4.

The King may authorise whom he will to execute a Statute, B. 2. C. 8. S. 14.

The Power of a King de facto, and whether Treason may be committed against him, B. 1. C. 17. S. 5, 6, 7.

The King is in Possession of his Crown before his Coronation, B. 1. C. 17. S. 8.

Treason cannot be committed against a mere titular King, B. 1. C. 17. S. 9.

All Offences against the King, are of a publick Nature, B. 1. C. 75. S. 2.

The Prerogatives of dispensing with Penal Statutes, (B. 2. C. 26. S. 56.) and pardoning capital

An Alphabetical Index to both Books

capital Offences, (B. 2. C. 37. S. 1.) are inseparable from the Crown.

For his Power of granting Pardons and Dispensations, see Pardon.

A Prerogative given to one King, goes to his Successor, B. 1. C. 19. S. 11. C. 63. S. 17.

Whether Persons taken by the King's Command, be replevisable, B. 2. C. 15. S. 18, 19, 33. See Bail.

No Procefs by Proviso, where he is a Party, B. 2. C. 41. S. 9.

He may sue in what Court he pleases, and therefore may demand a Certiorari for the Removal of an Indictment, B. 2. C. 27. S. 12.

Not bound by a Statute which does not name him, B. 2. C. 42. S. 1.

Nisi Prius, or Tales, not grantable where he is a Party, without his Consent, B. 2. C. 42. S. 1. C. 41. S. 16.

Whether he may take a peremptory Challenge, B. 2. C. 43. S. 2, 3.

Whether he needs shew his Cause of Challenge presently, B. 2. C. 43. S. 3, 4.

He is the principal Conservator of the Peace, B. 2. C. 8. S. 1.

King's Bench.

Its Original and high Dignity, and general Jurisdiction, B. 2. C. 13. S. 1, 2, 3. C. 24. S. 8. C. 27. S. 11. B. 1. C. 64. S. 31, 39, 40. C. 76. S. 49.

Whether it can remand a Record, or grant a Trial by Nisi Prius, B. 2. C. 3. S. 4, 5.

Its

An Alphabetical Index to both Books:

Its Power as to Reversing Judgments, and punishing inferior Judges, B. 2. C. 3. S. 6. C. 22. S. 14, 15, 16.

How far it suspends the Power of all other Courts in the County where it sits, B. 2. C. 3. S. 7. C. 5. S. 3.

How many Days there must be between the Teste and the Return of its Process, B. 2. C. 3. S. 8. C. 27. S. 8. C. 41. S. 2, 3.

Whether it may allow a Pardon pleaded by a Peer, and award Execution, &c. B. 2. C. 44. S. 11, 12.

Whether it can award Execution against Persons attainted in other Courts, and into what County, &c. B. 2. C. 51. S. 1.

It may award Restitution on an Indictment of Forcible Entry, B. 1. C. 64. S. 31.

Its Power in Relation to Bail. See Bail.

How a Bill of Appeal may be brought in it, B. 2. C. 23. S. 1.

How a criminal Information, B. 2. C. 26. S. 4 to 13.

Whether the Records of Justices of Oyer are to be removed into the King's Bench, B. 2. C. 6. S. 9.

Knight.

The Construction of the Word Knight in ancient Statutes, B. 2. C. 9. S. 2.

Knowledge, B. 1. C. 70. S. 10.

An Alphabetical Index to both Books,

L Arceny. See Petit Larceny.

What Larceny is Simple, what Mix'd, and what Grand, and what Petit Larceny, B. 1. C. 33. S. 1. 19.

What amounts to such a Taking as answers the Import of the Word cepit, in an Indictment of Larceny, B. 1. C. 33. S. 2 to 11.

What is such a Carrying away, as answers the Import of the Word alportavit, B. 1. C. 33. S. 11.

Where a Feme Covert may be Guilty of Larceny, B. 1. C. 33. S. 12.

Where Necessity makes the Taking another's Goods no Theft, B. 1. C. 33. S. 13.

Of what Goods there may be Larceny, B. 1. C. 33. S. 14 to 18.

Where a Man may steal his own Goods, B. 1. C. 33. S. 18.

Larceny from the Person, (B. 1. C. 35.) or from the House or Shop, (B. 1. C. 36.) how indictable, and where excluded from Clergy, &c. B. 2. C. 33. S. 38. 40 to 54.

Where punishable by the House of Correction, or Transportation, B. 2. C. 33. S. 88. &c.

Where Autrefois Acquit or Convict, &c. is a good Plea in Larceny, B. 2. C. 35. S. 5. C. 36. S. 5.

By whom, (B. 2. C. 23. S. 27.) in what Place, (B. 2. C. 23. S. 29.) an Appeal is to be brought, and where the Appellant shall have

An Alphabetical Index to both Books.

have Restitution, B. 2. C. 23. S. 31 to 36. C. 30. S. 8.

Whether a Flight for Petit Larceny forfeit Goods, B. 2. C. 49. S. 12.

Where Larceny is bailable, B. 2. C. 15. S. 25. See Bail.

Whether one may be found Guilty of Petit Larceny on an Indictment of Grand Larceny, &c. B. 1. C. 33. S. 20. B. 2. C. 47. S. 4.

What the Consequence of standing mute to an Indictment of Petit Larceny, B. 2. C. 30. S. 4.

Latin.

Whether false Latin, or Want of Latin, vitiate an Appeal or Indictment, B. 2. C. 23. S. 64. C. 25. S. 53, 54, 55.

Whether it be amendable, B. 2. C. 23. S. 79.

Indictments are to be arraigned in English, Appeals in French, B. 2. C. 28. S. 3.

All Pleas shall be enrolled in Latin, B. 2. C. 28. S. 2.

Leet. See Torn.

The Nature and Original of a Court-Leet, B. 2. C. 11. S. 1, 2.

In what Manner the Torn, or a Grand Leet, shall supply the Defect of an Inferior Leet, B. 2. C. 11. S. 3.

What shall forfeit a Leet, B. 2. C. 11. S. 4.

The Caption of an Indictment in a Court-Leet. See Caption, and B. 2. C. 11. S. 5, 6.

An Alphabetical Index to both Books;

Letter. See *Challenges*.

Lewdness.

*Where indictable, B. 1. C. 5. S. 4. C. 73.
S. 8.*

Libel.

*What a Libel, and in what Manner punishable,
B. 1. C. 73.*

*Where it amounts to High Treason, B. 1. C.
17. S. 19.*

*Whether it be indictable before Justices of
Peace, B. 2. C. 8. S. 22.*

*What good Evidence to prove it, B. 2. C. 46.
S. 29.*

Liberty. See *Franchise*.

*Whether Justices of Peace for a County may
act within a Liberty, B. 2. C. 8. S. 16.*

*How a Commission for the Peace, within a Li-
berty, may be granted or revoked, B. 2. C.
8. S. 16.*

Licence.

*Papists, how to be licensed to remove above
five Miles from Home, B. 1. C. 12. S. 9.*

Lie.

*Whether Cheating by a bare Lie be punishable,
B. 1. C. 71. S. 2.*

An Alphabetical Index to both Books.

Ligeance, B. 1. C. 17. S. 3. B. 2. C. 25. S. 36.

Livery.

Unlawful to give Liveries for Maintenance,
B. 1. C. 83. S. 30.

Local. See *County*.

All Appeals and Indictments are local, (B. 2. C. 23. S. 29, 45.) and therefore the Fact must be laid and proved in the proper County, B. 2. C. 25. S. 22 to 36.

Lodger.

Where Guilty of Larceny, B. 1. C. 33. S. 4.

Lodgings.

Whether Burglary may be in them, B. 1. C. 38. S. 8. B. 2. C. 33. S. 64.

London.

Recusants not to come within ten Miles of London, unless they dwell there, B. 1. C. 12. S. 12. C. 14. S. 3.

The Privilege of London, as to the Lord Mayor's being in every Commission, B. 1. C. 45. S. 1, 2.

Its Aldermen are privileged from being made Constables, B. 2. C. 10. S. 16.

H 3

Whether

An Alphabetical Index to both Books.

Whether London be a good Venue, B. 2. C. 23. S. 61.

Whether a good Addition, &c. B. 2. C. 23. S. 75.

Whether a Juror there must be a Freeholder, B. 2. C. 43. S. 8 to 16.

Whether a Certiorari lie to its Courts, and what shall be removed thereon, B. 2. C. 27. S. 11.

Lottery Orders.

Felony to counterfeit them, B. 1. C. 58. S. 7.

Lundtick. See Madman.

Madman.

HOW far punishable by a criminal Prosecution, B. 1. C. 1. S. 1 to 5. C. 17. S. 3. C. 27. S. 2.

He who procures him to commit a Crime is a principal Offender, B. 1. C. 1. S. 4.

The Confinement of him, &c. no Breach of the Peace, B. 1. C. 1. S. 2. C. 60. S. 16.

Magick, B. 1. C. 3.

Main.

An Alphabetical Index to both Books.

Mainprise.

The Difference between Bail and Mainprise, B.

2. C. 15. S. 2.

Bail on a Writ of Mainprise, B. 2. C. 15. S.

15.

*Maintenance. See Champerty, Embracery,
and Title.*

What is Maintenance ruralis, and what curialis, B. 1. C. 83. S. 1.

What amounts to an Act of Maintenance, B.

1. C. 83. S. 2 to 9.

*Where Maintenance is justifiable in Respect of
the Party's Interest in the Thing in Question, B. 1. C. 83. S. 9 to 13.*

Where in Respect of Kindred, B. 1. C. 83. S.

13.

Where by a Lord or Tenant, B. 1. C. 83. S.

14, 15.

Where by a Master or Servant, B. 1. C. 83.

S. 16, 17.

Where by a Neighbour, B. 1. C. 83. S. 18.

Where for Charity, B. 1. C. 83. S. 19.

Where by Counsellors, B. 1. C. 83. S. 20.

Where by Attornies, B. 1. C. 83. S. 21, 22,

23, 24.

Maintenance, how punished at Law, B. 1. C.

83, 25.

How by Statute, B. 1. C. 83. S. 26. &c.

Proceedings and Pleadings thereon, B. 1. C.

83. S. 28, &c.

An Alphabetical Index to both Books,

Malice. See *Murder* and B. 1. C. 29.

Malitia egreditur e persona, B. 1. C. 31. S. 16, &c. C. 39. S. 5.

Malice, with Truth, not sufficient to maintain a Writ of Conspiracy, &c. B. 1. C. 71. S. 5.

Where the Appellee shall recover Damages for a malicious Appeal, B. 2. C. 23. S. 87 to 100.

The Words ex malicia præcogitata necessary in an Indictment of Murder, B. 2. C. 25. S. 40.

Malt.

Lawful to buy Corn for Malting, B. 1. C. 80. S. 18.

Malum in se.

How to be pardoned, &c. B. 2. C. 37. S. 22 to 27.

Manor.

Who may be said to be taken within it, and whether Persons so taken be bailable, B. 2. C. 15. S. 23.

Whether they may be tried without an Indictment, B. 2. C. 25. S. 5.

Mansion-house. See *House, Arson, and Burglary*,

Man

An Alphabetical Index to both Books.

Manslaughter. See Homicide and Murder.

Must be without Deliberation, B. 1. C. 30.

S. 1.

There can be no Accessories in it, B. 1. C. 30,

S. 1, B. 2. C. 29. S. 15.

Construction of the Statute of Stabbing, and the Manner of Proceeding upon it, and where such Manslaughter is ousted of Clergy, B. 1. C. 30. S. 2. &c. B. 2. C. 33. S. 37.

Where a Killing in Defence of a Man's Person or Possession, shall be said to be Manslaughter, B. 1. C. 28. S. 16, 17.

Where the Killing another on a Provocation, shall be Manslaughter, and where Murder, B. 1. C. 31. S. 7 to the End of the Chapter. C. 32. S. 6.

Whether a Conviction of Manslaughter be pleadable to a Prosecution for Murder, B. 2. C. 36. S. 1, 9, &c.

Margent.

Whether it be sufficient to put the County in the Margent of an Indictment, B. 2. C. 25. S. 22.

Mariner.

How punishable for wandring without a Testimonial, &c. B. 1. C. 48. S. 1 to 7.

How for destroying a Ship, B. 1. C. 48. S. 8.

How for betraying a Ship, or joining with Pirates, &c. B. 1. C. 37. S. 7.

Mar-

An Alphabetical Index to both Books.

Marriage.

For Forcible Marriage. See Force.

Second Marriage Felony, B. 1. C. 43.

*Forfeiture for Popish Marriage, B. 1. C. 12.
S. 15.*

Marshal.

His ancient Authority, B. 2. C. 4. S. 2.

For his Court. See Constable.

Martial Law.

*Felony to execute a Man by it in Time of
Peace, B. 1. C. 31. S. 20.*

*Alien Enemies, to be punished by it, B. 1. C.
17. S. 3.*

Mafs.

*The Penalty for saying or hearing it, B. 1. C.
13. S. 1.*

Master.

*Whether he may maintain or defend a Suit by
or against the Servant, and e converso, B. 1.
83. S. 16, 17.*

Mayhem.

*What is Mayhem, B. 1. C. 44. S. 1. B. 2. C.
23. S. 5.*

How anciently punished, B. 1. C. 44. S. 2.

An Alphabetical Index to both Books.

Where it is Felony, B. 1. C. 44. S. 3, 4.

Where an Appeal of Mayhem lies, B. 2. C. 23. S. 5.

What ought to be the Form of the Count, B. 2. C. 23. S. 5 to 9.

What are good Pleas in such Action, B. 2. C. 23. S. 9 to 12.

Where the Maim shall be viewed, B. 2. C. 23. S. 12.

Mayhemavit, B. 2. C. 23. S. 6, 60.

Measures.

False Measures indictable in the Torn, B. 2. C. 10. S. 26.

Medietas linguæ, B. 2. C. 43. S. 23, &c.

Melius inquirendum.

Where awardable on a Coroner's Inquest, B. 2. C. 9. S. 30.

Member. See *Mayhem*.

What Contempts are punishable with the Loss of it, B. 1. C. 21. S. 1, 2, 3, 4.

Messenger.

Whether a Commitment to a Messenger be legal, B. 2. C. 16. S. 5.

Messuage. See *Mansion-house*.

Miles

An Alphabetical Index to both Books

Miles. See *Computation.*

Mitler.

Where Guilty of Larceny, B. 1. C. 33. S. 3.

Misbehaviour. See *Behaviour.*

Miscontinuance, B. 2. C. 27. S. 51, 52, 55, 56.

Misericordia. See *Amercement.*

Misnosmer. See *Abatement, and Addition, and Name.*

Where it abates an Appeal, B. 2. C. 23. S. 66.

Where a good Cause to avoid an Outlawry, B. 2. C. 50. S. 7.

Where pleadable in an Abatement of an Indictment, B. 2. C. 25. S. 43.

Misprifion.

Misprifion included in every Treason and Felony, B. 1. C. 20. S. 1. C. 59. S. 1. B. 2. C. 19. S. 13. C. 21. S. 2.

Misprifion of Treason, B. 1. C. 20. B. 2. C. 21. S. 2.

Judgment in it, B. 2. C. 48. S. 7.

What Misprifion of Felony, and how punished, B. 1. C. 59. S. 1.

Whether 33 H. 8. which gives a special Trial of Misprifion of Treason, being confessed and examined before the Privy Council, be repealed

An Alphabetical Index to both Books.

*repealed by 1 & 2 Ph. & Ma. B. 2. C. 40.
S. 2, 3.*

*Whether a Person indicted of it, may take a
peremptory Challenge, B. 2. C. 43. S. 4.*

*Whether there must be two Witnesses on every
Indictment, and Trial of it, B. 2. C. 25.
S. 86. C. 46. S. 2.*

*Whether an Officer, who has suffered an Escape
of a Felon, may be prosecuted for a Misprision,
before the Person escaping is convicted of
the Felony, B. 2. C. 19. S. 13. C. 21. S. 2.*

Misrecital. See Indictment and Recital.

Where it avoids a Pardon, B. 2. C. 37. S. 38.

Mistrial.

*Where a Cause shall be said to be mistried, and
how far a Mistrial is fatal, B. 2. C. 27.
S. 55.*

*Mittimus, B. 2. C. 18. S. 4. See Commit-
ment.*

Money. See Coin.

*What is the King's Money within 25 E. 3.
B. 1. C. 17. S. 31.*

Monopoly.

What is a Monopoly, B. 1. C. 79. S. 1.

*Whether grantable by the King, B. 1. C. 79.
S. 2. B. 2. C. 37. S. 24.*

How

An Alphabetical Index to both Books,
How restrained by Statute, B. 1. C. 79. S. 3.
&c.

Month. See Computation.

Moss-Troopers, B. 1. C. 56. S. 2.

Multiplication.

Of Gold and Silver, B. 1. C. 18. S. 4.

*Murder. See Manslaughter and Homicide,
and Petit Treason.*

*What is Murder at this Day, B. 1. C. 31.
S. 1.*

*Murder beyond Sea, or on the High Sea, (B.
1. C. 31. S. 2. B. 2. C. 25. S. 29 to 35.
C. 40. S. 2, 3.) or happening in one Coun-
ty, from a Wound in another, (B. 1. C. 31.
S. 3.) or in Wales, (B. 1. C. 31. S. 4.)
where triable, &c.*

*Who are such Persons, the Killing of whom is
to be esteemed Murder, B. 1. C. 31. S. 5.
The general Notion of Malice express, and
implied, B. 1. C. 31. S. 6.*

*Where Duelling is Evidence of express Ma-
lice, B. 1. C. 31. S. 7 to 12.*

*Where the Deliberateness with which a Man
acts, or the Want of sufficient Provocation,
B. 1. C. 31. S. 12 to 16.*

*Where the Law implies Malice in Death hap-
pening through an Intent to commit a Fe-
lony not intended against the Life of the
Person killed, (B. 1. C. 31. S. 16.) or
through*

An Alphabetical Index to both Books.

through an Intent to commit a Trespass not intended against the Person of him that is killed (B. 1. C. 31. S. 17.) or by one whose principal Motive was to assist a third Person, (B. 1. C. 31. S. 18.) or by one whose direct Design was to escape from an Arrest, (B. 1. C. 31. S. 19.) or by one whose principal Purpose was to usurp an illegal Authority, (B. 1. C. 31. S. 20.) or by one who intended no Mischief at all, B. 1. C. 31. S. 21.

Whether, and in what Manner one may be found Guilty of Manslaughter or of Homicide se. defendendo, on an Indictment of Murder, B. 2. C. 47. S. 2, 3.

What is required in a Pardon of Murder, B. 2. C. 37. S. 7 to 16.

The Construction of the Word Murder in a general Pardon, B. 2. C. 37. S. 16.

Whether Murder be in all Cases ousted of Clergy, B. 2. C. 33. S. 36.

What is good Evidence on an Indictment for Murder, and what Variance between the Indictment and Evidence is material, and what immaterial, B. 2. C. 46. S. 24, 25, 26, 27, 30 to 37.

Whether Murder be inquirable in the Torn, B. 2. C. 10. S. 24.

In what Manner Murder confessed or examined before the Privy Council, is triable in a foreign County, by 33 H. 8. B. 2. C. 40. S. 2, 3.

Whether Accessories are within the Statute, B. 2. C. 40. S. 4.

Whether

An Alphabetical Index to both Books.
*Whether an Acquittal of Murder will bar a
Prosecution for Petit Treason, B. 2. C. 35.
S. 5.*

Murdravit, B. 2. C. 23. S. 50.

Mute.

*Where a Man may be said to stand mute, B.
2. C. 30. S. 1.*
*How it shall be tried whether he stand mute of
Malice, B. 2. C. 30. S. 2.*
*What shall be done with a Person attainted,
standing Mute, B. 2. C. 30. S. 3.*
*Where standing mute shall amount to a Con-
viction, and where it subjects only to Pain
fort & dure, B. 2. C. 30. S. 4, 5.*
*The Form of the Judgment of Pain fort &
dure, B. 2. C. 30. S. 6.*
*What is forfeited by standing mute, B. 2. C.
30. S. 7.*
*Where the Prosecutor shall have a Restitution,
B. 2. C. 30. S. 8.*
*Whether Persons standing mute shall have their
Clergy, B. 2. C. 30. S. 9.*
*What shall be done to a Peer standing mute,
B. 2. C. 44. S. 13.*

Name.

HOW the Defendants and other Persons
mentioned in an Appeal or Indictment,
&c. must be described, B. 2. C. 23. S. 66 to
76. C. 25. S. 43 to 47.

Whether

An Alphabetical Index to both Books.

Whether the Caption of an Indictment must shew the Names of the Indictors, B. 2. C. 25. S. 78.

See Abatement, Dignity, Misnomer and Surname.

Naval Stores.

In what Cases those who steal or imbezil them, are ousted of their Clergy, B. 2. C. 33. S. 43, 44.

Ne exeat Regnum, B. 1. C. 22. S. 3.

Necessity.

No Justification of Killing or Taking a Man's Goods, or Breach of Prison, unless unavoidable, B. 1. C. 28. S. 1. C. 33. S. 13. B. 2. C. 18. S. 6.

Where a Nuisance is excused by Necessity, B. 1. C. 76. S. 30.

Where a Popish Priest coming into the Realm, B. 1. C. 17. S. 41.

Negative Pregnant, B. 2. C. 23. S. 77.

Neighbour.

How far he may maintain a Neighbour's Suit, B. 1. C. 83. S. 18.

Night, B. 1. C. 38. S. 2.

Felony to destroy Cattle in the Night, B. 1. C. 46.

An Alphabetical Index to both Books.

Night-Walkers.

To be bound to the Good Behaviour, B. 1. C. 61. S. 2.

Whether they may be arrested by private Persons, (B. 2. C. 12. S. 8.) as well as by Constables and Watchmen, B. 2. C. 13. S. 4. C. 10. S. 14.

Nil debet.

Where pleadable in a qui tam, B. 2. C. 26. S. 47.

Nisi prius.

Trial by Nisi prius in what Cases grantable, B. 1. C. 3. S. 4. C. 42.

Whether grantable in any Case, without Special Warrant, B. 2. C. 42.

The Power of Justices of Nisi prius, as to capital Offences, B. 2. C. 7. S. 10, 11. C. 23. S. 93. C. 41. S. 17.

Where an Attachment lies for Disobedience of a Rule made at Nisi prius, B. 2. C. 22. S. 23.

No Costs for a Defendant acquitted of a criminal Information, except at Nisi prius, B. 2. C. 26. S. 9.

Where a Distringas, &c. with a Tales, is grantable with a Nisi prius, B. 2. C. 41. S. 15.

The Court above will take judicial Notice of what is done at Nisi prius, B. 2. C. 41. S. 16.

An Alphabetical Index to both Books.

Nobility.

Lost by an Attainder, B. 2. C. 49. S. 35. See *Peers*.

Noctanter, B. 1. C. 38. S. 2.

Non compos.

Whether he can be Guilty of a capital Crime, (B. 1. C. 1. S. 1, 2, 3, 4.) or *bring an Appeal*, (B. 2. C. 23. S. 16.) or *be an Approver*, B. 2. C. 24. S. 2.

Nonfeasance.

Whether it can amount to Forgery, B. 1. C. 70. S. 4.

An Offence consisting in a Nonfeasance, needs no Venue, B. 1. C. 10. S. 2.

Whether a bare Refusal to leave a House, can amount to a Forcible Entry, or Detainer, B. 1. C. 64. S. 12, 15.

Non obstante.

Where necessary in a Pardon or Dispensation, B. 2. C. 37. S. 13, 24, 25.

Dispensations with the Clause of Non obstante, not allowed at this Day, B. 2. C. 37. S. 25.

Non omittas, B. 2. C. 27. S. 2.

An Alphabetical Index to both Books.

Note.

Felony maliciously to cut it off, B. 1. C. 44 S. 3.

Nonsuit.

Where a Bar of a new Appeal, &c. B. 2. C. 23. S. 11, 81, 84.

Where an Appellant shall be Nonsuited, B. 2. C. 23. S. 63.

Whether an Informer qui tam may be Nonsuit, B. 2. C. 26. S. 37.

Whether a Nonsuit, as to one Appellee, be a Nonsuit as to all, B. 2. C. 23. S. 84.

Notice.

It is implied in all Penal Statutes, that the Defendant must have Notice of the Accusation against him, B. 1. C. 64. S. 38. C. 76. S. 52.

What Notice of a new Commission is sufficient in order to determine a Former, B. 2. C. 5. S. 8.

Whether an Avowry for a Fine, &c. in a Term, must shew that due Notice was given of holding the Court, B. 2. C. 10. S. 8.

Whether every one within a Leet, be bound to take Notice of its Orders, B. 2. C. 10. S. 13.

Whether every Person in a County, be bound to take Notice of an Attainder in it, B. 2. C. 29. S. 18.

An Alphabetical Index to both Books.

Nul tiel Record.

Where for the Trial of it, the Tenor of the Record only shall be certified, B. 2. C. 27. S. 40.

What Variances are immaterial on such Issue, B. 2. C. 26. S. 45.

Nunnery.

Education in foreign Nunneries, how prohibited, B. 1. C. 15. S. 1, 2, 3.

Nuisance. See Highways and Bridges, Inns and Ale-houses.

What is a common Nuisance in general, B. 1. C. 75. S. 1.

What a Nuisance to the Highway, B. 1. C. 76. S. 30 to 38.

Where an Indictment must conclude ad nocummentum omnium ligeorum, &c. B. 1. C. 75. S. 1, 2, 3. B. 2. C. 25. S. 39.

Whether Scolds, (B. 1. C. 75. S. 3.) Gaming-houses, Stages for Rope-dancers, Playhouses, (B. 1. C. 75. S. 4.) Dove-cotes, (B. 1. C. 75. S. 5.) Gates in Highways, (B. 1. C. 76. S. 30. B. 1. C. 75. S. 6.) Brew-houses, Glass-houses, Sties for Swine, Tallow-chandlers Shops, &c. (B. 1. C. 75. S. 7.) or the Diverting of a navigable River, (B. 1. C. 75. S. 8.) be common Nuisances.

Whether any one may justify the Removing a Nuisance, and how, B. 1. C. 75. S. 9.

An Alphabetical Index to both Books.

Who is to remove a Stoppage in a common River, B. 1. C. 75. S. 10.

Judgment on a Conviction for a Nuisance, B. 1. C. 75. S. 11.

Whether Nuisances are indictable in the Town, B. 2. C. 10. S. 25.

How far pardonable, B. 2. C. 37. S. 26.

A Fact in one County, proving a Nuisance in another, may be indicted in either, B. 2. C. 25. S. 24.

Oatmeal. See Corn,

Oaths. See Perjury,

W*HAT Oaths are to be taken by Members of Parliament,* B. 1. C. 14. S. 1.

What by the King's Servants, B. 1. C. 14. S. 2.

Where it is Treason to refuse a second Tender of the Oaths, B. 1. C. 17. S. 43.

Where it is Premunire to refuse the Oaths, B. 1. C. 19. S. 9 to 15.

In what Words they are to be taken, B. 1. C. 19. S. 10.

How a Refusal is to be certified, B. 1. C. 19. S. 11, &c.

By whom, and under what Penalties the present Oaths of Allegiance and Supremacy and Abjuration, are to be taken, B. 1. C. 24. S. 3, 4, &c.

Whether

An Alphabetical Index to both Books.

Where a false Oath amounts to Perjury, B.

1. C. 69. S. 2 to 10.

Oath of Allegiance to be taken at the Torn, B.

2. C. 10. S. 1, 3.

Whether Evidence must be always given upon Oath, B. 2. C. 46. S. 22.

Oaths must be truly recited in an Indictment for not taking them, B. 1. C. 19. S. 10.

Delivery of Money in Pursuance of an Oath, extorted by Fear, Robbery, B. 1. C. 34 S. 2.

He that demands Surety of the Peace, must shew his Grievance upon Oath, B. 1. C. 60.

S. 4.

Whether it be a Contempt in a Juror to refuse to be sworn, B. 2. C. 22. S. 11.

Whether an Indictment must shew that the Jurors were sworn, B. 2. C. 9. S. 10. C. 25.

S. 78.

On what Book an Oath is to be administred, B.

2. C. 46. S. 21.

What Oath is required before the Exhibiting of a Qui tam, B. 2. C. 26. S. 28, 29, 32.

Occasional Conformity, B. 1. C. 8.

Occupier.

Bound to Repair the Highways, B. 1. C. 76.

S. 4, 8, 9, 10, 11. C. 77. S. 7.

Odio & Atia, B. 1. C. 29. S. 7. B. 2. C. 15.

S. 15.

An Alphabetical Index to both Books.

Office or Inquisition.

Whether Lands or Goods be vested in the King by a Forfeiture, without Office, B. 2. C. 49. S. 1, 15 to 25. B. 1. C. 10. S. 11.

Office and Officer. See Peace-Officer and Bailiff.

What shall forfeit an Office, B. 1. C. 66.

The Penalty of buying or selling Offices concerning Justice, or the Revenue, B. 1. C. 67 S. 2, 3, 4, 5, 6.

Officers not to conceal Offences, B. 1. C. 59. S. 1.

What Officers are bound to receive the Sacrament, B. 1. C. 8.

Where Persons are disabled to be Officers, in Respect of Recusancy, B. 1. C. 10. S. 25. C. 12. S. 5, 20.

All Executions must be by the proper Officers, B. 1. C. 28. S. 4.

Office of the Court.

For what Faults the Court, ex officio, may abate a Writ, B. 2. C. 23. S. 25, 64.

Old Age.

Where an Excuse for not serving on a Jury, B. 2. C. 43. S. 17.

Oldfeld Dike.

Felony to cut it, B. 1. C. 54.

Ordi-

An Alphabetical Index to both Books.

Ordinary.

His Power in Relation to the Benefit of the Clergy, B. 2. C. 33. S. 73, 76 to 81.

Overt Act.

What the Overt Act of Treason where a King is killed, B. 1. C. 17. S. 4.

What an Overt Act of Compassing the King's Death, B. 1. C. 17. S. 9

Whether Words amount to such Overt Act, B. 1. C. 17. S. 20 to 27.

Whether it be sufficient to prove any one Overt Act of Treason, and what is good Proof of such Overt Act, B. 2. C. 46. S. 27, 28.

Out-Buildings.

In what Out-Buildings Burglary, (B. 1. C. 38. S. 9.) or Arson may be committed, B. 1. C. 39. S. 2.

Outlawry.

Where Process of Outlawry lies, B. 2. C. 27. S. 57. B. 1. C. 85. S. 13.

In what Manner it is to be awarded, B. 2. C. 27. S. 58 to 66.

Whether it can be awarded by Justices of Gaol-Delivery, into a foreign County, B. 2. C. 24. S. 8.

Whether

An Alphabetical Index to both Books.

Whether it can be awarded by the Coroner, B. 2.

2. C. 9. S. 19, 22. C. 24. S. 8.

How an Accessary is to be Outlawed, B. 2. C.

27. S. 66, 67.

Judgment of Outlawry, how to be given, &c.

B. 2. C. 48. S. 15, 16.

How to be reversed, B. 2. C. 48. S. 17. C.

50. S. 1, 4, 5, 6, 7.

Whether the Party who reverses an Outlawry, shall plead to the Indictment, B. 2. C. 50.

S. 16.

Whether one Outlawed in a Personal Action, may

bring an Appeal, (B. 2. C. 23. S. 16.) or be an

Approver, (B. 2. C. 24. S. 2.) or a Wit-

ness or Juror, B. 2. C. 43. S. 16. C. 46.

S. 16. C. 25. S. 11, 13, 17, 20.

Where one may plead in Avoidance of an Out-

lawry or Indictment, that one of the Indict-

ors was Outlawed, B. 2. C. 25. S. 13, 17,

20.

Whether a Statute ousting those of their Clergy

who are found Guilty, oust those who are

Outlawed, B. 2. C. 33. S. 16, 33, 34.

Persons outlawed are ousted of their Clergy

by Statute, B. 2. C. 33. S. 18, 20, 22, 39,

40, 41.

*Oyer and Terminer. See Commission, Justices,
Gaol-Delivery.*

Justices of Oyer and Gaol Delivery, may exe-

cute both Commissions together, B. 2. C. 5.

S. 18.

Justices of Oyer, Gaol-Delivery, and Assise,

are to send their Records into the Exchequer,

B. 2. C. 5. S. 17.

Several

An Alphabetical Index to both Books.

Several Kinds of Commissions of Oyer, &c.
B. 2. C. 5. S. 19, 20.

Whether such Justices can proceed only on Indictments taken before themselves. B. 2. C. 5. S. 21.

Whether they may proceed on Offences, made such by Statute, which does not appoint any Court in which they shall be punished, B. 2. C. 5. S. 22. C. 26. S. 21.

To whom, and on what Occasions, Commissions of Oyer, &c. are grantable, B. 2. C. 5. S. 23.

Whether Justices of Oyer may award Restitution on an Indictment of Forcible Entry, B. 1. C. 64. S. 31.

Whether a Panel can be returned before them on a bare Award, B. 2. C. 41. S. 1.

How a Venire before them is to be returnable, B. 2. C. 41. S. 4, 5, 6.

Whether they may award a Tales, B. 2. C. 41. S. 18.

Whether Justices of Peace may proceed on a Statute which gives Authority to Justices of Oyer, &c. B. 2. C. 8. S. 19.

Pain fort & dure, B. 2. C. 30. S. 6.

W*Hether Judgment of Pain fort & dure, for one Felony, be any Bar to Prosecution for another,* B. 2. C. 36. S. 7.

Palace.

An Alphabetical Index to both Books.

Palace.

The Offence in striking in the King's Palace.

B. 1. C. 21. S. 1.

Palatine.

In what Manner a Certiorari, (B. 2. C. 27.

S. 11, 27.) or Capias shall go to a County

Palatine, B. 2. C. 27. S. 64.

Counties Palatine not within 34 & 35 of H.

8. which requires Transcripts of Attainders

to be made in the King's Bench, B. 2. C.

33. S. 17.

In whose Name, and under what Teste, the

Process from the Courts of such Counties

shall issue, B. 2. C. 27. S. 3.

Panel. See Copy, Gaol-Delivery, Jurors.

Papist.

Popish Recusant Convict, how disabled, as one

Excommunicate, B. 1. C. 12. S. 2.

Such Recusancy, how to be pleaded in Disabi-

lity, B. 1. C. 12. S. 3.

Where it disables to Present to a Church, B.

1. C. 15. S. 6, 7, 8, 9.

Or to have a publick Office, B. 1. C. 12. S. 5.

Where it disables a Wife to be Executrix, &c.

to her Husband, B. 1. C. 12. S. 6.

Where it excludes from Tenancy by Curtesy,

and from Dower, B. 1. C. 12. S. 7.

How it restrains one from going above Five

Miles from Home without Licence, and how

such Licence is to be given, B. 1. C. 12. S.

8, 9.

How

An Alphabetical Index to both Books.

How it restrains one from coming into the Presence of the King, &c. (B. 1. C. 12. S. 10.) and from keeping Armour, &c. (B. 1. C. 12. S. 11.) and from remaining within Ten Miles of London, B. 1. C. 12. S. 12.

Where it forfeits two Parts of a Jointure, &c. (B. 1. C. 12. S. 13.) and 20l. the first Year, 40l. the second, and 60l. the third, &c. (B. 1. C. 12. S. 14.) and 100l. for a Marriage or Baptism, (B. 1. C. 12. S. 15, 16.) and 20l. for a Burial, B. 1. C. 12. S. 17.

How a Recusant's House may be searched, B. 1. C. 12. S. 18.

Where a Recusant being a married Woman, may be committed, (B. 1. C. 12. S. 19.) and her Husband disabled to bear an Office, &c. B. 1. C. 12. S. 20.) and liable to have his House searched, B. 1. C. 12. S. 21.

The Penalty for saying or hearing Mass, B. 1. C. 13. S. 1.

The Reward for apprehending a Popish Priest, &c. and the Imprisonment of such Priest, &c. B. 1. C. 13. S. 2.

The Penalty for voting in either House of Parliament, or for being a sworn Servant to the King, without making the Declaration against Popery, B. 1. C. 14. S. 12.

Reputed Papists, refusing to make such Declaration, are not to remain within Ten Miles of London, nor to keep Horses worth 5l. nor to keep Armor, nor to present to a Benefice, B. 1. C. 14. S. 3, 4, 5.

The Penalty for giving or receiving Popish foreign Education, B. 1. C. 15. S. 1, 2, 3.

Persons

An Alphabetical Index to both Books,

Persons professing Popery, disabled to take Land by Purchase or Descent, or to present to a Benefice, (B. 1. C. 15. S. 4 to 10.) and subjected to perpetual Imprisonment for teaching School, &c. B. 1. C. 15. S. 10.

Where the Lord Chancellor may order a Maintenance for a Papist's Protestant Child, B. 1. C. 15. S. 11.

The Penalty for buying or selling Popish Books, B. 1. C. 15. S. 12.

Papists disabled to inherit the Crown, B. 1. C. 17. S. 10.

Where the Favourers of Popery are made Guilty of High Treason, Felony, and Premunire, see Treason, Felony, Premunire, Jesuit, Priest, Seminary.

Pardon.

By whom grantable, B. 2. C. 37. S. 1. B. 1. C. 17. S. 5.

Where of Right for Homicide, B. 1. C. 29. S. 7. (B. 2. C. 37. S. 2.) Robbery, (B. 2. C. 37. S. 3.) Clipping, (B. 2. C. 37. S. 4.) Larceny, Burglary, &c. B. 2. C. 37. S. 5, 6.

What a good Pardon of Felony, and whether such Pardon extend to Piracy or Treason, B. 2. C. 37. S. 7. B. 1. C. 37. S. 3. C. 25. S. 3

Whether a Pardon of Petit Treason extend to the Murder included in it, B. 2. C. 23. S. 22. C. 37. S. 15.

Whether the Pardon of one Man, can discharge another, B. 2. C. 37. S. 18.

How

An Alphabetical Index to both Books.

How several Persons are to be pardoned, B. 2.

C. 37. S. 20.

Pardons by Implication, B. 2. C. 37. S. 21.

Offences not capital how pardoned, B. 1. C.

37. S. 22, 33.

The King's dispensing Power, B. 2. C. 37. S.

24, 25.

No Offence pardonable any farther than as it is publick, (B. 2. C. 37. S. 26 to 34. C.

36. S. 3. B. 1. C. 60. S. 12. C. 85. S. 12.)

therefore a Pardon subsequent to a Qui tam, bars not the Informer's Part, B. 2. C. 26.

S. 46. C. 37. S. 27.

No Pardon can take off a Disability by Statute, B. 1. C. 65. S. 5.

Conditional Pardon, B. 2. C. 37. S. 34.

Pardon void for Mis-recital, B. 2. C. 37. S.

35.

The Effect of a Pardon, B. 1. C. 27. S. 7.

B. 2. C. 37. S. 36 to 41.

Pardon how waved, and where it cannot be waved, B. 2. C. 37. S. 41. B. 1. C. 64.

S. 40.

How to be pleaded, B. 2. C. 37. S. 42, &c.

Whether it salve the Corruption of Blood, B.

2. C. 49. S. 37.

Parish.

Whether a good Venue or Addition, B. 2. C.

23. S. 60, 74.

Park.

An Alphabetical Index to both Books.

Park.

Where the Killing of Trespassors in it may be justified, B. 1. C. 28. S. 10.

Where such Trespassors shall be adjudged Guilty of Murder, B. 1. C. 29. S. 4. C. 31. S. 17.

Parliament.

Treason to deny its Power, to limit the Crown, B. 1. C. 17. S. 45.

Whether Persons committed by it are bailable, B. 2. C. 15. S. 35.

Where a Petition to it may be esteemed a Libel, B. 1. C. 73. S. 7, 11.

Its Power to declare Treason, B. 1. C. 17. S. 36.

No Appeal to be pursued in it, B. 2. C. 23. S. 13.

What Attainders of Treason by the Common Law, are of the same Force with those by Parliament, B. 2. C. 50. S. 13.

The Parliament only can authorise a new Kind of Punishment, B. 2. C. 48. S. 10.

Parol.

Where the Mis-recital of the Time or Place at which a Parliament is holden, is fatal, B. 2. C. 25. S. 65.

How

An Alphabetical Index to both Books.

How a general Pardon by Parliament is to be pleaded, and how far the Court is to take Notice of it ex officio, B. 2. C. 37. S. 41, 42.

Parol.

Whether an Arrest may be justified by a Parol Command, B. 1. C. 65. S. 15. B. 2. C. 13. S. 10.

Peace. See contra pacem.

For what Causes a Justice may ex officio demand Surety of the Peace, B. 1. C. 60. S. 1.

What Persons are entitled to demand it, B. 1. C. 60. S. 2.

Against whom, B. 1. C. 60. S. 3.

For what Causes, B. 1. C. 60. S. 4.

In what Manner it is grantable by the Chancery or King's Bench, B. 1. C. 60. S. 5.

In what Manner by Justices of Peace, B. 1. C. 60. S. 6.

The Warrant for it how executed, B. 1. C. 60. S. 7, 8, 9.

How Process for it may be superseded, B. 1. C. 60. S. 10.

The Form of the Recognisance, B. 1. C. 60. S. 11.

How the Recognisance may be discharged, B. 1. C. 60. S. 12.

How it is to be proceeded upon, B. 1. C. 60. S. 13.

How it may be forfeited, B. 1. C. 60. S. 14.

What is such a Breach of the Peace, as makes a Homicide occasioned by it, amount to Murder, B. 1. C. 31. S. 6, 15, 17.

Whether an Indictment must shew that the Party killed was in the Peace of God and the King, B. 2. C. 25. S. 46.

An Alphabetical Index to both Books.

Conservators of the Peace, by the Common Law, B. 2. C. 8. S. 1 to 7.

Conservators of the Peace by Statute, B. 2. C. 8. S. 7 to 13.

The Form of the Commission, B. 2. C. 8. S. 13.

Justices of Peace may execute Statutes made before the Reign of Ed. 3. B. 2. C. 8. S. 14.

Whether they can act out of their County, and within a Liberty, B. 2. C. 8. S. 15.

What Commissions of the Peace are grantable of Course, B. 2. C. 8. S. 16.

Where Justices of Peace may proceed on Indictments found before others, B. 2. C. 8. S. 17. C. 10. S. 34, &c.

For what Crimes, and in what Circumstances, a Warrant from a Justice of Peace is necessary in order for an Arrest, and where it is a Justification, B. 2. C. 13. S. 7, 8, 10.

Where his Command by Parol, will justify an Arrest, see Parol.

In what Cases, and in what Manner Justices of the Peace, are to bail Offenders, B. 2. C. 15. S. 27 to 32.

How they may reform the Panel of a Grand Jury, B. 2. C. 25. S. 21.

How a Venire before them is to be returnable, B. 2. C. 41. S. 4.

Whether a Panel can be returned before them on a bare Award, B. 2. C. 41. S. 1.

By what Names Justices of Peace are to be described, B. 2. C. 8. S. 18.

What Power Justices of Peace have over Felonies, B. 2. C. 8. S. 19.

What

An Alphabetical Index to both Books.

What as to Treason or Premunire, &c. B. 2.
C. 8. S. 20, 21.

What over inferior Offences, B. 2. C. 8. S.
22.

Sessions of the Peace General and Quarter, B.
2. C. 8. S. 23, 26.

Who are bound to attend it, B. 2. C. 8. S.
24.

*Whether a Presentment of the Highways by a
Justice of Peace, be traversable,* B. 1. C.
76. S. 44, 45.

*Whether a Justice of Peace have Cognisance of
Barratry,* B. 1. C. 71. S. 3.

*His Power in Relation to the Appointment of
Constables,* B. 2. C. 10. S. 22.

*For other Matters concerning Justices of Peace,
see Highways, Record, Riot, Traverse.*

Peace-Officers.

Where it is Murder to kill a Peace-Officer,
B. 1. C. 31. S. 16, 17, 18.

*The Power of a Peace-Officer in suppressing
Riots, &c.* B. 1. C. 65. S. 11.

Peers.

*What is to be done previous to the Trial of a
Peer,* B. 2. C. 44. S. 1, 2.

The Solemnity of the Trial, B. 2. C. 44. S.
3, 4.

Who are to be the Triers, B. 2. C. 44. S. 5.

Whether any of them can be challenged, B. 2.
C. 43. S. 4.

An Alphabetical Index to both Books.

What Persons have a Right to be so tried, B. 2. C. 44. S. 6, 7, 8, 9.

As to what Crimes and in what Suits, B. 2. C. 44. S. 10.

How the King's Bench may proceed in Relation to a Peer, B. 2. C. 44. S. 11, 12.

What is to be done with a Peer standing mute, B. 2. C. 44. S. 13.

Whether a Peer can demand a Trial by his Peers, after he has waived it, B. 2. C. 44. S. 13.

How the Judges are to be consulted, B. 2. C. 44. S. 14.

Whether there can be any Adjournment, B. 2. C. 44. S. 15.

Whether Peers be bound to attend the Parliament, B. 1. C. 22. S. 1.

Whether to find Sureties of the Peace, B. 1. C. 60. S. 3.

Must assist in suppressing Riots, B. 1. C. 65. S. 18.

Are not bound to attend the Leet, B. 2. C. 10. S. 3.

Whether liable to an Attachment, B. 2. C. 20. S. 21.

Cannot be Approvers, B. 2. C. 24. S. 2.

What Process shall go against them, B. 2. C. 27. S. 5.

They are intitled to the Benefit of the Clergy without reading, &c. B. 2. C. 33. S. 69. 74.

Whether they shall have Counsel in Trials for capital Crimes, B. 2. C. 39. S. 1, 2, 3.

May be challenged if returned on the Trial of a Commoner, B. 2. C. 43. S. 4.

An Alphabetical Index to both Books.

Whether a Peer as such, be a Keeper of the Peace, B. 2. C. 8. S. 1.

Is not compellable to wage Battel, B. 2. C. 45. S. 1.

Shall have the same Judgment in capital Cases as a Commoner, B. 2. C. 48. S. 2.

Penal Statute. See Information and Penalty.

In what Respects construed by Equity, B. 1. C. 30. S. 2. C. 17. S. 9. C. 32. S. 2, 3, 4. C. 33. S. 6. C. 84. S. 1. B. 2. 45. S. 3. C. 33. S. 65.

Generally construed strictly, B. 1. C. 84. S. 4. C. 17. S. 27, 28. C. 33. S. 6.

The Danger of Compounding for the Penalty, B. 2. C. 26. S. 54, 55.

The Prerogative of Dispensing with Penal Statutes, inseparable from the Crown, B. 2. C. 26. S. 56.

Penance. See Pain fort & dure.

Penetration, B. 1. C. 41. S. 1.

Percussit, B. 2. C. 23. S. 53.

Peremptory.

The Nature of a peremptory Challenge of a Juror, B. 2. C. 43. S. 2, 3, 4, 5.

Plea in Abatement, where Peremptory, B. 2. C. 23. S. 78.

An Alphabetical Index to both Books,

Periphrasis.

Will not supply the Want of Words of Art,
B. 2. C. 25. S. 36.

*Nor the Want of an express laying of an Of-
fence indicted within the Statute,* B. 2. C.
25. S. 68.

Perjury.

*Perjury at Common Law, (B. 1. C. 69. S. 1.)
is a false Oath taken wilfully,* B. 1. C. 69.
S. 2.

And in a judicial Proceeding, B. 1. C. 69.
S. 3.

*And before Persons authorised to administer
it,* B. 1. C. 69. S. 4.

And by a Person sworn to depose the Truth, B.
1. C. 69. S. 5.

And swearing absolutely, B. 1. C. 69. S. 7.
The Thing sworn must be some way material,
(B. 1. C. 69. S. 8.) *but it is not necessary*
that it were false, (B. 1. C. 69. S. 6, 17.)
or credited, B. 1. C. 69. S. 9.

Subornation of Perjury at Common Law, B.
1. C. 69. S. 10.

*Perjury and Subornation of Perjury by Sta-
tute,* B. 1. C. 69. S. 11, 12. 13.

*The Form of an Indictment, &c. on the Sta-
tute,* B. 1. C. 69. S. 14, 15, 17. B. 2. C.
25. S. 68.

*Whether one can be guilty of Perjury within
the Statute, in a Case wherein he cannot be
Guilty of Subornation of it,* B. 1. C. 69.
S. 16.

Whether

An Alphabetical Index to both Books.

Whether the false Oath must appear to have caused an actual Damage to some Person,

B. 1. C. 69. S. 17.

Whether Perjury be indictable before Justices of Peace, B. 2. C. 8. S. 22.

Whether a Conviction of it disable a Man from being a Juror, (B. 2. C. 43. S. 16.)
or Witness, B. 2. C. 46. S. 17, 18.

Whether such Disability can be removed by a Pardon, B. 2. C. 46. S. 17.

Whether an Indictment for it can be removed by Certiorari, B. 2. C. 27. S. 12.

Person.

Larceny from the Person, B. 1. C. 35.

What shall be said to be a Taking from the Person, B. 1. C. 34. S. 4.

Petit Larceny. See Larceny.

What is Petit Larceny, B. 1. C. 33. S. 1, 19.

Whether one may be found Guilty of it on an Indictment for Grand Larceny, B. 1. C. 33. S. 20.

How indicted and punished, B. 1. C. 33. S. 21. B. 2. C. 33. S. 88. C. 48. S. 10.

What to be done where the Defendant stands mute, B. 2. C. 30. S. 4.

Petit Treason, B. 1. C. 32. *See Treason, Murder, and Pardon.*

Judgment in it, B. 2. C. 48. S. 3.

Whether in all Cases ousted of Clergy, B. 2. C. 33. S. 35.

An Alphabetical Index to both Books.

What is to be done with one standing mute on a Charge of Petit Treason, B. 2. C. 30. S. 5.

A Pardon of it extends to the Murder included in it, B. 2. C. 37. S. 15.

Whether an Indictment for it require two Witnesses, B. 2. C. 25. S. 82 to 88.

Whether it forfeit Dower, B. 2. C. 49. S. 32, 33.

Philosopher's Stone, B. 1. C. 18. S. 4.

Physician.

The Danger of Killing a Man by Physick, by one not authorised to administer it, B. 1. C. 31. S. 21.

Whether a Physician be privileged from being made a Constable, B. 2. C. 10. S. 17, 19.

Pictures.

May be Libels, B. 1. C. 73. S. 2.

Pidgeons.

Whether Larceny can be of them, B. 1. C. 33. S. 15.

Piracy.

Anciently Petit Treason, (B. 1. C. 32. S. 1.) afterwards Felony by Civil Law only, and therefore not within a general Pardon of Felony, B. 1. C. 37. S. 1, 3. B. 2. C. 37. S. 8.

Corrupts not the Bloud, B. 1. C. 37. S. 3.

How

An Alphabetical Index to both Books.

How triable and indictable, &c. at this Day,
B. 1. C. 33. S. 10. C. 37. B. 2. C. 25. S.
29. C. 33. S. 28.

Place. See Addition, Count, Venue.

*How far the Place laid in the Indictment is
material upon Evidence,* B. 2. C. 46. S.
27.

Plantations.

*Whether the Buying an Office there, be within
5 & 6 Ed. 6.* B. 1. C. 67. S. 4.

Plays and Playhouses, B. 1. C. 75. S. 4.

*Pleading. See Abatement, Homicide, Disa-
bility and Justification.*

*Certainty of Pleading dispensed with where
the Pleader is not privy to the Matter
pleaded,* B. 1. C. 82. S. 14.

*Several Matters are pleadable together in Ap-
peals and Indictments, but not in Informations,*
B. 2. C. 23. S. 78, 85, 86. C. 25. S. 91.
C. 26. S. 44.

How a Pardon is to be pleaded, B. 2. C. 37.
S. 52, &c.

The Danger of pleading a false Plea, B. 1.
C. 83. S. 24.

How a Man shall plead in Disability, B. 1.
C. 12. S. 2, 3.

*A Plea grounded on a Statute, must expressly
pursue it,* B. 1. C. 12. S. 9.

What

An Alphabetical Index to both Books.

What Errors may be salved by an Appearance and Plea, B. 2. C. 23. S. 75. C. 27. S. 55, 56.

How the Defendant is to plead to a Qui tam, B. 2. C. 26. S. 44 to 51.

A Contempt to take Money for vicious Pleading, B. 2. C. 22. S. 14.

Plough-Land.

What a Plough-land, in Respect of the Repairs of the Highways, B. 1. C. 76. S. 8.

Poison, B. 2. C. 23. S. 53.

Polygamy.

Where Felony, &c. B. 1. C. 43. B. 2. C. 25. S. 25.

Pope.

Anciently Treason to plead an Excommunication by him, B. 1. C. 17. S. 1.

The Offence of upholding his Power at this Day, B. 1. C. 17. S. 37, 38.

He could never make a Sanctuary, B. 2. C. 32. S. 3.

Popery. See Papist.

Popular Action.

In what County, and in what Manner to be brought, B. 2. C. 26. S. 17, 18. See Information.

Posse

An Alphabetical Index to both Books,

Posse Comitatus.

Where it may be raised, B. 1. C. 64. S. 32. C. 65. S. 2, 15, 20.

Possession.

Not altered by Theft, B. 1. C. 33. S. 10.

Where two claim at the same Time, the Possession shall be his who has Right, B. 1. C. 64. S. 12, 17.

No Larceny of Goods in one's own Possession, B. 1. C. 33. S. 10, 11.

Incorporeal Things are always in the Possession of him that has Right, B. 1. C. 64. S. 27.

Where a Possession is a Defence in an Indictment of Forcible Entry, B. 1. C. 64. S. 17, 32, 33, 34, 45.

Powdike.

Felony to cut it, B. 1. C. 54.

Prayer. See Common Prayer.

Precedents.

Where the Number of them helps an Error, B. 2. C. 11. S. 6. C. 25. S. 77.

Pre-

An Alphabetical Index to both Books.

Premunire.

Premunire in making Use of Papal Bulls, &c. B. 1. C. 19. S. 12.

In derogating from the Common Law Courts by Appeals to other Courts, &c. B. 1. C. 19. S. 3, 4.

In appealing to Rome, B. 1. C. 19. S. 3, 5.

In acting as a Suffragan without the Bishop's Appointment, B. 1. C. 19. S. 6.

In not obeying a Conge d' elire, &c. B. 1. C. 19. S. 7.

In maintaining the Pope's Power, B. 1. C. 17. S. 37, 38.

In using Agnus Dei, B. 1. C. 19. S. 9.

In contributing to a Popish Seminary, B. 1. C. 19. S. 10.

In refusing the Oaths, &c. B. 1. C. 19. S. 11 to 15.

In denying the Power of the Parliament to limit the Crown, B. 1. C. 17. S. 45.

What Judgment shall be in Premunire, and in what Manner the Person attainted, is disabled to sue, and is out of the King's Protection, &c. B. 1. C. 19. S. 16, 17. B. 2. C. 48. S. 6.

Whether he can demand Sureties of the Peace, B. 1. C. 60. S. 2.

What he forfeits, B. 2. C. 49. S. 24.

How he is to be proceeded against, B. 1. C. 19. S. 18.

Whether there can be Accessaries in Premunire, B. 2. C. 49. S. 24.

To what Time the Forfeiture for it shall relate, B. 2. C. 49. S. 27.

Whether

An Alphabetical Index to both Books.

Whether a Pardon to it may be pleaded by Attorney, B. 2. C. 26. S. 38.

Whether a Process of Outlawry lie for it, B. 2. C. 27. S. 57.

Whether a General Pardon of all Offences, &c. extend to it, B. 2. C. 37. S. 22.

What Jurisdiction Justices of Peace have over it, B. 2. C. 8. S. 20.

Prerogative. See Contempt and King.

Prescription.

Whether it can make a Sanctuary, (B. 2. C. 32. S. 3.) or authorise a Nuisance, B. 1. C. 75. S. 5, 6.) or Fees not allowed by Law, (B. 1. C. 68. S. 2.) or Conservators of the Peace, (B. 2. C. 8, S. 5.) or the Franchise of making a Coroner, (B. 2. C. 9. S. 5.)

Presentation.

Papists disabled to present to Livings, B. 1. C. 15. S. 6, 7, 8, 9.

Presentment.

The Difference between a Presentment and an Indictment, B. 2. C. 25. S. 1.

Presentment in a Torn, &c. how traversable, see Traverse.

Presumption.

What Presumption amounts to full Proof, B. 2. C. 46. S. 35.

What

An Alphabetical Index to both Books.

What such a Presumption of Guilt as will justify an Arrest, B. 2. C. 12. S. 5.

Where it shall exclude from Bail, (B. 2. C. 15. S. 23.) or from waging of Battel, B. 2. C. 45. S. 1.

Pretended Title.

The Offence of Buying or Selling it, B. 1. C. 86.

Priest.

Felony in harbouring a Popish Priest, B. 1. C. 18. S. 18.

Reward for apprehending him, B. 1. C. 13. S. 2.

Where it is Treason for him to remain in England, B. 1. C. 17. S. 42.

The Offence of not discovering him, B. 1. C. 17. S. 41.

How he is to be indicted, B. 1. C. 17. S. 41.

Prince and Princess.

How far within the Statute of Treasons, B. 1. C. 17. S. 12.

Principal. See Accessary.

Privity of Suit, B. 2. C. 26. S. 45.

Prison. See Commitment.

To what Prison Offenders are to be committed, B. 2. C. 16. S. 3 to 8.

An Alphabetical Index to both Books.

What a lawful Prison, &c. B. 2. C. 16. S. 3, 4, 5. C. 18. S. 1, 3, 4.

How a Man may be removed from Prison to Prison, B. 2. C. 16. S. 7.

How Persons taken for Felony are to be examined before they are committed, B. 2. C. 9. S. 14. C. 16. S. 8.

What such a Breaking of Prison, as amounts to Felony, B. 2. C. 18.

Prisoner. See *Prison.*

Private Things and Persons. See *Publick.*

How far a private Person may suppress an Affray, B. 1. C. 63. S. 8, 9.

Where a private Person is to arrest a Criminal, see Arrest.

It is a Libel to defame him by writing, &c. B. 1. C. 73. S. 6.

Private Annoyances not indictable as Nuisances, B. 1. C. 75, 76. S. 1.

What a private Way, B. 1. C. 76. S. 1.

A Rising for a private Grievance, but a Riot for a publick one, Treason, B. 1. C. 17. S. 14, 16. C. 67. S. 7.

Whether a private Person may be bound to repair a Highway, B. 1. C. 76. S. 6, 7.

Whether a private Person may make a Commitment for a Crime, B. 2. C. 16. S. 2.

Whether he be punishable for an Escape, B. 2. C. 20.

Privy Council. See *Council.*

Proce-

An Alphabetical Index to both Books.

Procedendo.

May revive a Commission superſeded, B. 2. C. 5. S. 3.

No Procedendo after a Certiorari filed, B. 2. C. 27. S. 39.

Proceſs. See Certiorari, Diſcontinuance, and Outlawry.

Where Proceſs may be awarded into a foreign County, B. 2. C. 27. S. 1.

Where it ſhall have Clause of Non omittas, B. 2. C. 27. S. 2.

In whoſe Name it ſhall be teſted, B. 2. C. 27. S. 3.

What is the proper Proceſs from inferior Courts, B. 2. C. 27. S. 4.

What Proceſs ſhall go on Informations of Intruſion, and on Qui tams, &c. B. 2. C. 27. S. 5.

What on Informations in the Crown-Office, B. 2. C. 27. S. 6.

What on Indiſtments of Treason, Felony, and Maim, B. 2. C. 27. S. 7.

How many Days there ought to be between the Teſte and Return of the King's Bench Proceſs, B. 2. C. 27. S. 8.

Where the Proceſs ſhall be executed by the Sheriff, and where by the Bailiff of a Franchiſe, B. 2. C. 27. S. 9.

Where a Common Capias ſhall go, and where an Exigent on a Default or Escape of the Defendant, B. 2. C. 27. S. 10.

Proceſs againſt Jurors, B. 2. C. 41.

Where

An Alphabetical Index to both Books.

Where an Attachment is grantable for the Abuse of Process. B. 2. C. 22. S. 24.

What Process shall go against Witnesses, B. 2. C. 46. S. 23.

Proditorie, B. 2. C. 25. S. 36.

Profert.

Where necessary, B. 2. C. 35. S. 2. C. 37. S. 44.

Prohibition. See Spiritual Court.

Property.

What is such an Alteration of the Form of Goods, as changes their Property, B. 1. C. 33. S. 7.

Property not altered by Theft, B. 1. C. 33. S. 10.

Larceny cannot be of Things whereof no one has the Property, B. 1. C. 33. S. 14.

But may be of Things whereof the absolute Property is in the Taker, B. 1. C. 33. S. 18.

A Claim of Property, without any Colour, no Excuse of a Robbery, B. 1. C. 34. S. 6.

A special Property sufficient in an Appeal of Larceny, B. 2. C. 23. S. 27, 28.

Protection.

Where it extends to a Qui tam, B. 2. C. 26. S. 43.

L

Whether

An Alphabetical Index to both Books.
Whether it amounts to a Pardon, B. 2. C. 37
S. 21.

Protestant Dissenters.

How far tolerated, B. 1. C. 16.

Protestant Succession.

High Treason in denying the Rightfulness of
it, B. 1. C. 17. S. 45.

Proviso.

The Nature of a Trial by Proviso, B. 2. C.
41. S. 9.

Whether necessary in an Indictment on a Sta-
tute to shew that the Defendant is not with-
in its Provisoes, B. 2. C. 25. S. 71.

The Difference between an Exception in the
Body of a Statute, and an Exception in a
Proviso, B. 2. C. 46. S. 37.

Prosecution. See Conspiracy.

Provocation.

What such a Provocation as makes the Killing
of a Man, Manslaughter, and not Murder,
B. 1. C. 31. S. 12.

Publication.

What amounts to a Publication of a Libel, B.
1. C. 73. S. 9, 11, 12, 13.

Publi-

An Alphabetical Index to both Books.

Publication of Forgery, how punished, &c. B.

I. C. 70. S. 4, 5, 10, 11.

Publick. See *Statute and private Things,*
and Persons.

*What Offences are of a publick Nature, and
what of a private,* B. 1. C. 17. S. 14, 16.

C. 75. S. 1, 2, 3, 4, 5, 6, 7, 8. B. 2. C.
10. S. 24, 25, 26. C. 25. S. 4.

*The King can only pardon publick Offences, but
no private Wrongs,* B. 2. C. 37. S. 26 to 34.

Purgation, B. 2. C. 33. S. 70 to 78.

*The Offence of Admitting a Clerk attainted
to his Purgation,* B. 2. C. 19. S. 5.

Purpresture.

Inquirable in the Torn, B. 2. C. 10. S. 25.

Purveyors,

Their ancient Employment, B. 1. C. 47. S. 1.

Abuses by them, how punished, B. 1. C. 47.
S. 2.

Quash.

WHere an Indictment may be quashed, B.
2. C. 25. S. 89, 90.

Whether an Information may be quashed, B. 2.
C. 25. S. 89.

An Alphabetical Index to both Books,
*Where a Certiorari shall be quashed, and a new
one awarded, B. 2. C. 27. S. 49.*

Queen.

*What Queen within the Statute of Treason, B.
1. C. 17. S. 9, 11.
Whether triable by the Peers, B. 2. C. 44. S. 8.*

Qui tam. See Information.

Quod cum. See Recital.

*Sufficient in an Information, though not in an
Indictment, B. 2. C. 26. S. 18.*

Quorum.

*No need in the Caption of an Indictment at
Sessions to stile any of the Justices of the
Quorum, B. 2. C. 25. S. 75.*

Quo Warranto.

*Information in the Nature of a Quo War-
ranto, where grantable, and what Judg-
ment shall be in it, B. 2. C. 26. S. 4 10
12.*

*The Statutes of Jeofails extend to it, B. 2.
C. 26. S. 12.*

Ransom.

An Alphabetical Index to both Books.

Ransom. See Fine.

Rape.

WHAT is a Rape, B. 1. C. 41. S. 1,
2, 3, 4.

How it is punishable, B. 1. C. 41. S. 6.

Felony to abuse a Female Child under Ten Years
of Age, B. 1. C. 41. S. 5.

Pardon of Rape, B. 2. C. 37. S. 8, &c.

Appeal of Rape, B. 2. C. 23. S. 36 to 47.

Where a Woman consenting to a Ravisher, loses
her Lands, B. 2. C. 23. S. 37 to 47.

Whether inquirable in the Torn, (B. 2. C. 10.
S. 24.) or before the Coroner, B. 2. C. 9.
S. 17.

Who are Principals in it, B. 2. C. 29. S. 4.

Rapuit, B. 2. C. 23. S. 50, 52.

Rates.

How made for the Highways and Bridges, B.
1. C. 76. S. 12. C. 77. S. 7, 8.

Reading.

Whether necessary to intitle a Man to Clergy,
B. 2. C. 33. S. 2, 74, 75.

An Alphabetical Index to both Books,

Realm.

Murder, &c. out of the Realm, how triable, see Foreign.

Reason. See Madmen.

Reattachment. See Resummons.

Receiver. See Accessary.

Indictment for the Receipt of Felons, how to be laid, B. 2. C. 25. S. 42.

Whether the bare Receipt of a Felon, make the Receiver an Accessary, B. 2. C. 17, C. 29. S. 16.

Recital. See Misrecital.

An Indictment laying the Charge by Way of Recital is void, B. 2. C. 25. S. 40. C. 26. S. 18.

Whether an Indictment on a Statute must recite it, and what Misrecitals are fatal, B. 1. C. 86. S. 7. B. 2. C. 25. S. 46 to 75. C. 23. S. 38.

Where a Pardon is void, in Respect of a wrong Recital, B. 2. C. 37. S. 35.

Recognisance. See Peace and Behaviour.

The Form of a Recognisance for the Peace, B. 1. C. 60. S. 11.

Whether it can be taken by the King, B. 2. C. 8. S. 1.

An Alphabetical Index to both Books.

*By what Judges it may be taken, B. 2. C. 8.
S. 1, 2, 3.*

*How such Recognisance may be discharged, B.
1. C. 60. S. 12. B. 2. C. 37. S. 27.*

*How it is to be proceeded upon, B. 1. C. 60.
S. 13.*

*How it may be forfeited, B. 1. C. 60. S. 14,
15, 16.*

*Whether a Sheriff or Constable can take Bail
by Recognisance, B. 2. C. 15. S. 14.*

*In what Form the Recognisance of Bail is to
be taken, B. 2. C. 15. S. 40.*

What shall forfeit it, B. 2. C. 15. S. 41.

*What Recognisance shall be given on a criminal
Information, before any Process shall
Issue, B. 2. C. 26. S. 4, 8.*

*What Recognisance is to be given on a Certio-
rari, B. 2. C. 27. S. 22 to 37.*

*Whether a Recognisance for Appearance, be pro-
per to be removed by Certiorari, B. 2. C. 27.
S. 12.*

*Whether a Recognisance for the Good Behaviour,
be superseded by Certiorari, B. 2. C. 27. S.
38.*

*By whom a Recognisance taken by a Justice of
Peace, shall be certified, B. 2. C. 27. S.
41.*

Record. See Traverse and Forcible Entry.

*What Offences against Records amount to Fe-
lony, and how the Offender is to be proceeded
against, B. 1. C. 45.*

*Riot how recorded, B. 1. C. 65. S. 22, 24,
29.*

An Alphabetical Index to both Books.

Where the Records of Justices of Oyer, &c. are to be kept, B. 2. C. 5. S. 17.

The Construction of a Statute appointing that an Offence shall be determined in any of the King's Courts of Record, B. 2. C. 5. S. 22.

Whether he who pleads a Record, or gives it in Evidence, must produce it, B. 2. C. 25. S. 20. C. 35. S. 2. C. 37. S. 44. C. 46. S. 16.

Whether a Court ex officio be to take Notice of its own Records, B. 2. C. 25. S. 20.

Whether an Escape may be tried by the Record of the Court, without more, B. 2. C. 19. S. 9.

Where a Judgment may be avoided by Plea, for Faults apparent in the Record, B. 2. C. 50. S. 1.

Recovery.

Where a Recovery in a former Action bars a second, B. 2. C. 23. S. 9.

Recusancy, and Recusant. See Church and Papist.

Regrating, B. 1. C. 80. S. 8. See Forfeasting.

Viſtuallers, Fiſhmongers, Butchers, and Poulticers, may lawfully retail, B. 1. C. 80. S. 35.

Rela-

An Alphabetical Index to both Books.

Relation. See Fiction.

Relation of the Forfeiture of a Felo de se, B. 1.

C. 27. S. 7.

*Of the Malice conceived by a Servant, when
such, B. 1. C. 32. S. 4.*

A Crime shall not be made Felony by Relation,

B. 2. C. 19. S. 12. C. 23. S. 57, 58. C. 29.

S. 29.

But a Pardon may enure by Relation, B. 2. C.

37. S. 17.

*To what Time a Forfeiture shall relate, see
Forfeiture.*

Release.

What Release is a Bar in Appeal, B. 2. C.

23. S. 11, 83, 84.

*Whether the Plea of a Release be consistent
with the general Issue, B. 2. C. 23. S. 85,
86.*

*Whether a Release will discharge a Recogni-
sance for the Peace, B. 1. C. 60. S. 12.*

*Where a Release is pleadable to a Qui tam, B.
2. C. 26. S. 46.*

Religion. See Church and Papist.

All Offences against it are of a publick Nature,

B. 1. C. 75. S. 2.

Reliques. See Papist.

**Removal of Records. See Certiorari and
Variance.**

Repairs.

An Alphabetical Index to both Books.

Repairs. See *Bridges and Highways.*

Replevin. See *Homine replegiando.*

Replication.

How to be made in a Qui tam, B. 2. C. 26. S. 49.

Reprieve, B. 2. C. 51. S. 7, 8.

Repugnancy.

Fatal in Appeals and in Indictments, B. 1. C. 64. S. 22, 24. B. 2. C. 23. S. 56, 57, 58.

What Pleas are repugnant to one another, B. 2. C. 13. S. 85, 86.

Where a Verdict is void for Repugnancy, B. 2. C. 47. S. 5.

Where Matter repugnant shall be rejected, B. 2. C. 47. S. 6.

Repugnant to suppose a Statute made on such a Day, in the First and Second Years of such a King, B. 2. C. 25. S. 65.

Reimbursement.

Surveyors laying out Monies on the Highways, how reimbursed, B. 1. C. 76. S. 14.

Inhabitants, on whom a whole Fine for the Highway is levied, how reimbursed, B. 1. C. 76. S. 15.

Repu-

An Alphabetical Index to both Books,

Reputation.

A strong Circumstance in the Judging whether a Person ought to be bailed, B. 2. C. 15. S. 23, 25, 26.

Re-restitution, B. 1. C. 64. S. 41, 42.

Rescous.

The Nature of it, and how far it agrees with the Offence of Breaking Prison, B. 2. C. 21.

The Danger of Rescuing a Prisoner from a Court of Record, B. 2. C. 21. S. 3.

Where an Attachment shall be granted for a Rescous, B. 2. C. 22. S. 20.

Whether Process of Outlawry lie on the Return of a Rescous, B. 2. C. 27. S. 57.

Whether a Rescous by Enemies have the same Effect with the Rescous by Subjects, B. 2. C. 19. S. 4.

Residence.

What is such Residence within a Leet, as binds a Man to attend it, B. 2. C. 10. S. 3.

Resistance.

Whether the Resistance of an Arrest for Felony, make the Resisters Accessaries, B. 2. C. 17. C. 29. S. 16.

Resti-

An Alphabetical Index to both Books.

Restitution.

- By Virtue of what Statute awardable on a Forcible Entry, B. 1. C. 64. S. 7.*
Whether on an Indictment against one who has been in Possession Three Years, B. 1. C. 64. S. 8, 33, 34, 35, 36, 37.
Whether to Lessees or Copyholders, B. 1. C. 64. S. 9.
On what Indictment it may be awarded, B. 1. C. 64. S. 21, 24.
Of what Possessions, (B. 1. C. 64. S. 27) to whom, B. 1. C. 64. S. 28, 29.
By whom, and in what Manner, B. 1. C. 64. S. 30, 31, 32.
Whether without Trial, or calling on Defendant to answer for himself, B. 1. C. 64. S. 38.
How it may be superseded, B. 1. C. 64. S. 39, 40.
Where there shall be a Re-restitution, B. 1. C. 64. S. 42.
Where Restitution shall be made of the Thing stolen on an Indictment, or Appeal of Larceny or Robbery, B. 2. C. 23. S. 31 to 36. C. 28. S. 6. C. 30. S. 7.

Resummons and Reattachment.

- Where a Cause put without Day is to be revived by Resummons or Reattachment, B. 2. C. 27. S. 53, 54.*

Retail. See Forestalling and Regrating.

Retraxit.

An Alphabetical Index to both Books.

Retraxit.

Whether a Bar of a new Action, B. 2. C. 23. S. 81, 84.

Return.

Where an Attachment lies for not returning, or falsely returning a Writ, B. 2. C. 22. S. 2, 4, 5.

No Justification for not returning a Certiorari, that a Statute says that the inferior Court may proceed notwithstanding it, B. 2. C. 27. S. 26.

In what Manner a Certiorari is to be returned, B. 2. C. 27. S. 40 to 51.

Whether one may be tried for a capital Matter upon the Sheriff's Return without any Indictment, B. 2. C. 18. S. 12. C. 21. S. 2. C. 25. S. 10.

Revocation.

Whether a Power of Revocation be forfeitable for Treason, B. 2. C. 49. S. 7, 16, 22.

Right.

Whether a Right of Entry or Action can be forfeited, B. 2. C. 49. S. 3, 15, 16, 17, 19, 20, 21.

Riot.

What a Riot, B. 1. C. 65. S. 1.

What

An Alphabetical Index to both Books,

What Kind of Force makes an Assembly Riotous, B. 1. C. 65. S. 2.

Where a Meeting at first innocent, may become riotous, B. 1. C. 65. S. 3.

There must be some Violence, (B. 1. C. 65. S. 4.) and Terror, B. 1. C. 65. S. 5.

If the Grievance intended to be removed by it, be a publick one, it is Treason, B. 1. C. 17. S. 14, 15, 16. C. 65. S. 6.

No Justification that the Thing intended to be removed by it was a Nuisance, &c. B. 1. C. 65. S. 7.

What is a Rout, B. 1. C. 65. S. 8.

What an unlawful Assembly, B. 1. C. 65. S. 9, 10.

Riots, &c. how suppressed and punished by Common Law, B. 1. C. 65. S. 10, 11, 12.

Where the Killing of a Rioter is justifiable, B. 1. C. 28. S. 9.

Whether Infants or Women be punishable as Rioters, B. 1. C. 65. S. 13.

How a Riot may be suppressed by one Justice of Peace, B. 1. C. 65. S. 14, 15, 16.

Whether one Justice may make a Record of it, B. 1. C. 65. S. 16.

How it may be suppressed by two or more Justices, or by the Sheriff, B. 1. C. 65. S. 17.

Who are bound by 13 H. 4. to attend the Justices, &c. for the suppressing a Riot, B. 1. C. 65. S. 18.

Whether they may use Arms, B. 1. C. 65. S. 19.

Where the Justices, &c. may raise the Posse, B. 1. C. 65. S. 20, 26.

Where they may record a Riot, &c. and arrest, and commit the Offenders, and whether such

An Alphabetical Index to both Books.

such Record be traversable, and the Form of it, B. 1. C. 65. S. 21 to 26.

In what Manner they are to enquire of a Riot, and if the Truth cannot be so found, make a Certificate of it into the Chancery, &c. B. 1. C. 65. S. 26 to 39.

Where Rioters are punishable as Felons, B. 1. C. 29. S. 4. C. 56. S. 39.

Whether a Verdict on an Indictment for a Riot can find two only Guilty, and acquit all the rest, B. 2. C. 47. S. 5.

River.

Stoppage of it, where a Nuisance, B. 1. C. 75. S. 8.

How to be cleared, B. 1. C. 75. S. 10.

Robbery.

What is Robbery, B. 1. C. 34. S. 1.

What is such a Taking away as is necessary in Robbery, B. 1. C. 34. S. 2, 3.

What such a Taking from the Person, B. 1. C. 34. S. 4.

What such Violence, B. 1. C. 34. S. 5, 7.

Claim of Property, without Colour, no Excuse, B. 1. C. 34. S. 6.

Indictment and Judgment for Robbery, B. 1. C. 34. S. 8.

Where Restitution shall be made of the Things stolen, B. 2. C. 23. S. 31 to 36. C. 30. S. 7.

Robbery ousted of Clergy, B. 2. C. 33. S. 48 to 67.

No

An Alphabetical Index to both Books.

No Taking can be Robbery, unless accompanied with some Violence, B. 2. C. 33. S. 60, 63.

Where a Robber is intitled to a Pardon, on discovering others, B. 2. C. 37. S. 3.

By what Authority Justices of Assise hold Plea of Appeals of Robbery, B. 2. C. 7. S. 5.

Whether such Appeal can be brought out of the proper County, B. 2. C. 23. S. 29.

Rope-dancing, B. 1. C. 75. S. 4.

Rout, B. 1. C. 65. S. 8. See Riot.

Rule.

Where an Attachment is grantable without any Rule to shew Cause, B. 2. C. 22. S. 22.

Where an Attachment is grantable for disobeying a Rule of Court, B. 2. C. 22. S. 23.

Sacrament.

N*OT to be reviled, B. 1. C. 6. S. 5.
To be taken by all Officers, (B. 1. C. 8.)*

Sacrilege.

*Whether within the Benefit of the Clergy or Sanctuary, B. 2. C. 33. S. 10, 44, 45, 46.
C. 9. S. 23. C. 34. S. 4.*

Sale.

An Alphabetical Index to both Books.

Sale.

Whether a Sale prevent the Restitution of Goods stolen, B. 2. C. 23. S. 33.

Where Goods distrained for an Amerciament, may be sold, B. 2. C. 10. S. 11.

Whether one under a Prosecution for Treason or Felony, may sell his Goods, B. 2. C. 49. S. 28.

Sanctuary.

What Places were Sanctuaries at Law, and how far they protected those that fled to them, B. 2. C. 32.

Saving.

Saving against Corruption of Blood, how construed, B. 1. C. 40. S. 3. B. 2. C. 49. S. 25.

School-Master.

Teaching School by Nonconformists, (B. 1. C. 9.) and Papists, (B. 1. C. 15. S. 10.) how punished.

How far he may justify the Correction of his Scholar, B. 1. C. 29. S. 1. C. 60. S. 16.

Scienter, B. 2. C. 25. S. 42.

M

Scire

An Alphabetical Index to both Books.

Scire Facias.

In what Manner to be brought on a Recognisance of the Peace, B. 1. C. 60. S. 13.

The proper Process after a Removal of a Cause by Certiorari, B. 2. C. 27. S. 50.

Whether the Return of two Nihils be equivalent to a Scire feci, B. 2. C. 27. S. 50. C. 37. S. 27.

Whether a Scire facias must be sued against the Appellant, before the Pardon of the Appellee shall be allowed, and what shall be done thereon, B. 2. C. 37. S. 27.

Whether in such Case, or for the Reversal of an Attainder, there shall be a Scire facias against the Lord, B. 2. C. 37. S. 27. C. 50. S. 12.

Scold.

How punishable, B. 1. C. 75. S. 3, 11.

Scot.

Whether within the Statutes which give a Trial de medietate linguæ, B. 2. C. 43. S. 28.

Scripture.

Offences against it. B. 1. C. 2. S. 1, 5. C. 5.

An Alphabetical Index to both Books.

Sea.

Treason, (B. 2. C. 25. S. 29 to 35.) Murder, (B. 1. C. 31. S. 2.) and other Felonies, (B. 1. C. 37.) on the Sea, how triable.

Where an Offence shall be said to have been committed on the Sea, B. 1. C. 37. S. 2. B. 2. C. 9. S. 7.

Felony on the Sea, not inquirable by the Coroner, B. 2. C. 9. S. 7.

Commissions of Oyer relating to Sea-Walls, B. 2. C. 5. S. 20.

Seal.

Treason in counterfeiting the King's Seal, B. 1. C. 17. S. 28.

Inquisitions in the Torn, how to be sealed, B. 2. C. 10. S. 29.

Under what Seal a Certiorari is to be returned, B. 2. C. 27. S. 40.

Seconds.

Seconds of Duellers, where Guilty of Murder, B. 1. C. 31. S. 7.

Secretary of State.

May commit for Treason, B. 2. C. 16. S. 2.

Se defendendo, B. 1. C. 27. S. 3. C. 28. S. 14, 17. C. 29. S. 5. See Manslaughter and Homicide.

An Alphabetical Index to both Books.

Sedition.

Seditious Conventicles and Words in Derogation of the established Religion, how punishable, B. 1. C. 2. S. 4. C. 5.

Seisfure. See Lands, Goods, Deadland, Inquisition.

Seminary.

Education in Popish Seminaries, how prohibited, B. 1. C. 15. S. 1, 2, 3.

Where it is Treason not to return from them, B. 1. C. 17. S. 43.

Premunire to maintain them, B. 1. C. 19. S. 10.

Servant.

Whether excusable by Coertion from his Master, B. 1. C. 1. S. 6.

How far he may be Guilty of Larceny of his Master's Goods in his Charge, or deliver'd to keep, (B. 1. C. 33. S. 6, 7, 8.) or of Goods taken after the Master's Death, C. 53.

Whether he may maintain his Master, &c. in a Law-Suit, B. 1. C. 83. S. 16, 17. or fight in his Defence. B. 1. C. 60. S. 16.

Who is such a Servant as may be Guilty of Petit Treason, B. 1. C. 32. S. 2, 3, 4.

Whether Servant be a good Addition, B. 2. C. 23. S. 72, 73.

Whether a Servant shall be an Accessary for receiving his Master, B. 2. C. 29. S. 19.
Who

An Alphabetical Index to both Books.

Who shall have an Appeal for a Robbery done to a Servant, B. 2. C. 23. S. 27, 28.

Sessions.

The Nature of Sessions for the Peace, and when, and how holden, &c. B. 2. C. 8. S. 10, 23, 24, 25, 26.

Caption of an Indictment at such Session, B. 2. C. 8. S. 19. C. 25. S. 75, 78. 80.

Several. See Fine, Joint Indictment, &c. and Pleading.

Whether an Indictment, &c. may be laid jointly and severally, B. 1. C. 76. S. 61. B. 2. C. 25. S. 56.

Whether several Offenders must have several Pardons, B. 2. C. 37. S. 18, 19, 20.

Where a Venire shall be joint, and where several, and the Consequences of its being joint, B. 2. C. 41. S. 7, 8.

Sewers.

Orders of Commissioners of Sewers, how to be removed, and how the Filing of the Return may be stay'd, B. 2. C. 27. S. 11.

Sheep.

Transportation of them, how punished, B. 1. C. 52.

Sheriff. See Franchise.

A Conservator of the Peace, at Common Law, B. 2. C. 8. S. 3.

An Alphabetical Index to both Books.

But ought not to exercise the Office of Justice of Peace, B. 2. C. 8. S. 12.

Where he may bail Offenders, B. 2. C. 15. S. 14 to 27.

Where liable to an Attachment, B. 2. C. 22. S. 2 to 6.

Shop.

What such a Shop, wherein Burglary may be committed, B. 1. C. 38. S. 10.

Shoplifter.

Where ousted of Clergy. See Clergy.

The Reward for apprehending him, B. 2. C. 12. S. 11.

Where he is entitled to a Pardon, on discovering others, B. 2. C. 37. S. 5, 6.

Shrowd.

Larceny to steal it from a Corps, B. 1. C. 33. S. 17.

Sickness.

Whether an Excuse for a Recusant's Absence from Church, B. 1. C. 10. S. 5.

Whether a good Cause of Challenge of a Juror, B. 2. C. 43. S. 17.

Whether a good Cause of Bailing a Person otherwise not bailable, B. 2. C. 15. S. 38.

An Alphabetical Index to both Books.

Sign.

*Where it amounts to a Libel, B. 1. C. 73.
S. 2.*

Sign Manual.

Treason to counterfeit it, B. 1. C. 17. S. 28.

*Silver. See Coin and Counterfeiting, and
Money.*

*Where it is Felony to debase it, &c. B. 1. C.
18. S. 1.*

*The Penalty for transporting it, &c. B. 1. C.
18. S. 2, 3.*

*Whether it may be multiplied, B. 1. C. 18.
S. 4.*

Similitude.

*Whether Similitude of Hands be Evidence, B. 2.
C. 46. S. 12.*

Simony.

*Whether within the general Words of a Par-
don, B. 2. C. 37. S. 22.*

*How far a Simonist may take Advantage of
a Pardon of Simony, B. 2. C. 37. S.
40.*

Si non omnes, B. 2. C. 5. S. 15.

Slander. See Contempts.

*Sodomy, B. 1. C. 4^t
M 4*

Soldier

An Alphabetical Index to both Books.

Soldier.

How punished for wandring without a Testimonial, &c. B. 1. C. 48. S. 1 to 7.

How for leaving the King's Service without Leave, &c. B. 1. C. 48. S. 7.

In what Cases Persons are compellable to serve the King in his Wars, B. 1. C. 22. S. 1.

Son.

Where excusable by Coertion from his Father, B. 1. C. 1. S. 6.

Or for defending him from an Assault, B. 1. C. 60. S. 16.

Or for maintaining him in an Action, B. 1. C. 83. S. 13.

Where a Son comes under the Notion of a Servant, B. 1. C. 32. S. 2.

Son Assault Demefne.

Where it must be pleaded, and where it may be given in Evidence, B. 1. C. 52. S. 3.
B. 2. C. 46. S. 37.

No Justification for striking, &c. in Westminster-Hall, B. 1. C. 21. S. 2.

Whether pleadable in Mayhem, B. 2. C. 23. S. 10.

Sorcery, B. 1. C. 3.

South-

An Alphabetical Index to both Books.

South-Sea Company.

Felony to counterfeit its Seal, or alter its Bonds, &c. B. 1. C. 58. S. 6.

Special Pleading. See Pleading, General Issue and Homicide

Spinster.

Where a good Addition, B. 2. C. 23. S. 66,
72.

Spiritual Court.

Not to be prohibited where it proceeds wholly on the Canons of the Church, B. 1. C. 10. S. 4. C. 2. S. 5.

Whether liable to a Premunire for holding Plea of temporal Matters, B. 1. C. 19. S. 4.

Where a Pardon discharges Costs in such Court, B. 2. C. 37. S. 29 to 33.

Is Offices are within the Statute against Buying of Offices, B. 1. C. 67. S. 4.

Whether Suits in it be within the Statutes of Maintenance, B. 1. C. 83. S. 28.

Stabbing.

Construction of the Statute of Stabbing, B. 1. C. 30. S. 2, &c.

Stamps.

An Alphabetical Index to both Books.

Stamps.

Felony to counterfeit them, B. 1. C. 58. S. 4, 5.

Statutes. See Construction, Felony by Statute, and Penal Statutes.

Judges ex officio take Notice of all publick Statutes, B. 2. C. 25. S. 64, &c. C. 37. S. 40, 41, 42.

For Indictments on Statutes, see Indictment, Clergy, Contra formam Statuti, Proviso, Recital, Venue.

Where an Indictment or Information lie for an Offence against a Statute, B. 2. C. 25. S. 4. C. 26. S. 2.

Stealing. See Larceny.

Steward.

The Dignity and Duty of the Lord High Steward of England, B. 2. C. 2.

In what Manner he is to proceed at the Trial of a Peer, B. 2. C. 44. S. 1, 2, 3, 4, 5, 14, 15.

Whether Error lie in the King's Bench, on an Attainder before him, B. 2. C. 50. S. 16.

Stroke.

Where it is material who gave the first Stroke, B. 1. C. 29. S. 5. C. 30. S. 2, 3. C. 31. S. 8.

No

An Alphabetical Index to both Books.

No Murder unless the Party die within the Year and Day after the Stroke, B. 1. C. 26. S. 5. C. 27. S. 1.

How the Death must be laid in an Indictment, &c. where the Party died on one Day of a Stroke on another, B. 2. C. 23. S. 57, 58. C. 25. S. 42.

Whether the Time and Manner of the Stroke must appear as well as that of the Death, B. 2. C. 25. S. 49. C. 23. S. 53 to 60.

Subornation. See Perjury.

Subpœna.

Where the first Process in criminal Cases, B. 2. C. 27. S. 6.

Such.

How construed, B. 2. C. 33. S. 30.

Sufficient. See Insufficient.

What is sufficient Bail, B. 2. C. 15. S. 3. C. 27. S. 29.

Sufficiency of the Appellant to answer Damages for a malicious Appeal, &c. B. 2. C. 23. S. 96, 97.

Suffragan.

Not to act without the Appointment of the Bishop of the Diocese, under Pain of a Premunire, B. 1. C. 19. S. 6.

Sug-

An Alphabetical Index to both Books.

Suggestion.

The Truth of the Suggestion in a Writ de coronatore exonerando, how inquirable, B. 2. C. 9. S. 6.

Where a Pardon shall be disallowed upon the Falsity of the Suggestion on which it was granted, B. 2. C. 37. S. 9.

Summons.

Whether a Sessions for the Peace may be holden without Summons, B. 2. C. 8. S. 23.

How many Days are required for the Summons of a Furer, B. 2. C. 41. S. 4.

Sunday.

Prophanations of it, how punished, B. 1. C. 6. S. 1, 2.

Unlawful to make an Arrest on it, B. 1. C. 31. S. 19.

An Indictment cannot be taken on it, B. 2. C. 10. S. 2.

Superfedeas. See Certiorari.

Warrant for the Peace, how superseded, B. 1. C. 60. S. 10.

Restitution on Forcible Entry, how superseded, B. 1. C. 64. S. 39, &c.

How the Power of Justices of Oyer, &c. may be superseded, B. 2. C. 5. S. 3.

Where the King's Bench may grant a Superfedeas of Procefs from the Exchequer, B. 2. C. 37. S. 48.

Suppli-

An Alphabetical Index to both Books.

Supplicavit, B. 1. C. 60. S. 5.

Surety. See Sufficient, Insufficient, Peace and Behaviour.

Surgeons. See Physician.

Whether Surgeons be privileged from being Constables, B. 2. C. 10. S. 18, 19.

Surname.

Not always necessary, B. 2. C. 25. S. 45.

Surplus.

Where to be rejected, B. 2. C. 47. S. 6.

Surveyors.

Surveyors of the Highways, how to be appointed, B. 1. C. 76. S. 22.

How to execute their Office, B. 1. C. 76. S. 22 to 30, 43.

Under what Penalties, B. 1. C. 76. S. 27.

Suspicion.

What a sufficient Suspicion to justify an Arrest for Felony, and how to be pleaded, B. 2. C. 12. S. 5, 6.

Persons taken on a groundless Suspicion shall be discharged, B. 2. C. 15. S. 1.

Swans.

Where it is Larceny to take them, B. 1. C. 33. S. 16.

Swearing.

An Alphabetical Index to both Books.

Swearing.

Prophane Swearing, how punished, B. 1. C. 6. S. 3.

Tail.

W*Hether an Estate-Tail shall be forfeited for Treason, Felony, or Premunire, B. 2. C. 49. S. 3, 15, 16, 17, 18, 20, 21, 24. B. 1. C. 19. S.*

Whether an Heir in Tail to a Recusant be subject to his Forfeiture, B. 2. C. 10. S. 48.

Taking. See Cepit and Asportavit.

Tales, B. 2. C. 41. S. 10, &c.

Tame. See Feræ Naturæ.

Tax. See Assessment, Rate, and Bridges.

Tenant. See Lord and Tenure.

Tenement.

Too uncertain in an Indictment of Forcible Entry, B. 1. C. 64. S. 20.

Tenor.

Where the Tenor of a Record shall be certified, B. 2. C. 27. S. 45.

What

An Alphabetical Index to both Books.

What is good Evidence on an Indictment for writing a Libel, secundum tenorem sequentem, B. 2. C. 46. S. 29.

Tenure.

Whether one may be bound by it to repair a Highway, and how he is indictable, B. 1. C. 76. S. 6, 58. C. 77. S. 2.

Who shall have the Forfeiture of Things not lying in Tenure on an Attainder of Felony, &c. B. 2. C. 49. S. 2.

Term of Art.

Not to be supplied by Circumlocution, B. 2. C. 23. S. 50. C. 25. S. 36.

Terror.

What Terror makes an Assembly unlawful, B. 1. C. 64. S. 5.

Test, B. 1. C. 8. S. 2.

Teste.

Under whose Names Process is to be tested, B. 1. C. 65. S. 26. B. 2. C. 8. S. 23. C. 27. S. 3.

Where a Commission of Oyer must be tested in Term, B. 2. C. 3. S. 7.

How many Days must be between the Teste and Return of the King's Bench Process, B. 2. C. 3. S. 8. C. 27. S. 8.

Whether

An Alphabetical Index to both Books.
Whether a Certiorari, &c. can remove a Record subsequent to its Teſte, B. 2. C. 27. S. 46.

Theftbore, B. 1. C. 59. S. 3.

Thief. See Larceny.

Time. See Year, and Verdict, and Indictment.

Identity of Time, how to be expreſſed, ſee ad-tunc & ibidem, and B. 2. C. 25. S. 40, 41, 42, 49, 50, 51.

The Time when an Offence was committed, how to be laid, B. 2. C. 23. S. 57 to 60.

How far the Time laid in the Indictment is Material upon Evidence, and whether the Conviction may not be falſified, as to the Time, B. 2. C. 46. S. 25, 26.

Tipling.

Tipling in an Alehouſe, how reſtrained, B. 1. C. 78. S. 11, 13.

Tithes.

Whether one may be Guilty of a Forcible Entry, in Reſpect of them, B. 1. C. 64. S. 16.

Whether an Order concerning them be removable by Certiorari, B. 2. C. 27. S. 17.

Title.

An Alphabetical Index to both Books;

Title.

The Offence of buying or selling a pretended

Title, B. 1. C. 86.

Contempts against the King's Title, B. 1. C.

24. S. 1.

Whether a Man may by Force regain a Posses-

sion to which he has a Title, B. 1. C. 64.

S. 1.

Token.

Getting Money by false Tokens, how punished,

B. 1. C. 71. S. 3, 4.

Toleration.

Protestant Dissenters, how tolerated, B. 1.

C. 16.

Torn.

The original Institution of the Sheriff's Torn,

B. 2. C. 10. S. 1.

What Persons are to take the Oaths of Allegi-

ance in it, B. 1. C. 24. S. 2. B. 2. C. 10.

S. 1.

At what Time and Place it shall be holden, B.

2. C. 10. S. 2.

What Persons owe Suit to it, B. 2. C. 10.

S. 3.

Whether a Man can be bound to attend more

than one Torn or Leet, B. 2. C. 10. S. 3,

28. C. 11. S. 3.

N

The

An Alphabetical Index to both Books.

The Sheriff's Authority, as to Awarding Process, and trying Indictments found in the Torn, B. 2. C. 10. S. 4.

As to Imposing Fines and Amerciaments, B. 2. C. 10. S. 5, 6, 13.

How such Amerciaments are to be assessed, B. 2. C. 10. S. 7.

General Rules for Declarations and Avowries for such Fines and Amerciaments, B. 2. C. 10. S. 8.

How such Fines and Amerciaments are to be recovered by Distress, B. 2. C. 10. S. 9, 10, 11.

How by Action of Debt, B. 2. C. 10. S. 8, 12.

Whether the Sheriff may impose a Pain for not removing a Nuisance, &c. B. 2. C. 10. S. 13.

The Power of the Sheriff, as to the Appointment of Constables, B. 2. C. 10. S. 15.

Whether the Torn have a Jurisdiction over Offences made such by Statute, B. 2. C. 10. S. 23, 24.

Whether over Treasons or Felonies, B. 2. C. 10. S. 24.

Whether the Nusances of which it inquires ought to be of a publick Nature, B. 2. C. 10. S. 25, 26, 27. B. 1. C. 76. S. 1, 42, 46.

As to what Matters it may make By-laws, B. 2. C. 10. S. 27.

Whether it may inquire of Offences arising out of the Hundred in which it sits, B. 2. C. 10. S. 28.

By what Jurors Inquests in Tourns, are to be taken, B. 2. C. 10. S. 29, 30, 31, 32.

Whether

An Alphabetical Index to both Books.

Whether the Sheriff can take an Inquest in the Torn, by Virtue of a Writ, B. 2. C. 10. S. 33.

In what Manner the Sheriff is restrained at this Day from proceeding on an Indictment found in the Torn, and how Justices of Peace are to proceed thereon, B. 2. C. 10. S. 34, 35.

Where a Presentment in the Torn is not traversable, and where it is, B. 2. C. 10. S. 36, 37. B. 1. C. 76. S. 52.

Town and Township.

Where a Township may be amerced for suffering a dead Body to lie to Putrefaction, (B. 2. C. 9. S. 10.) or for suffering a Bridge to decay, found to have occasioned a Man's Death, (B. 2. C. 9. S. 12.) or for suffering a Manslayer, &c. to escape, B. 2. C. 9. S. 13. C. 12. S. 1.

Where a Township is answerable for Felons Goods seised in it, B. 2. C. 49. S. 31.

Transportation.

Transportation of Bullion, (B. 1. C. 18. S. 2, 3, 4.) Sheep or Wool, (B. 1. C. 52.) how punished.

Transportation of Corn, Beef, Pork, Ale, Cyder, and Mum, &c. lawful, B. 1. C. 80. S. 19, 21, 22.

Transporter of Corn, how licensed, B. 1. C. 80. S. 27, 29.

Where Felons are to be transported to the Plantations, B. 2. C. 33. S. 88, &c.

An Alphabetical Index to both Books:

Transubstantiation.

What Persons are bound to make a Declaration against it, B. 1. C. 8, 9, 14.

Traverse.

Forcible Entry, not traversable after a Justice of Peace has recorded it on View, B. 1. C. 64. S. 5, 6. C. 65. S. 16.

Record of Armour in terrorem populi, &c. (B. 1. C. 65. S. 16.) or of a Riot contra formam Statuti, &c. B. 1. C. 65. S. 23. not traversable.

Whether a Presentment of the Highways, by a Justice of Peace, be traversable, B. 1. C. 76. S. 44, 45, 52.

Whether the Presentment of an Escape, be traversable, B. 2. C. 19. S. 9.

Presentment of the Highway in a Leet, whether traversable, B. 1. C. 76. S. 52. B. 2. C. 10. S. 36, 37.

Other Presentments in the Leet, how traversable, B. 2. C. 10. S. 4, 36, 37.

Coroners Inquests of Death, and other Records of his, how far traversable, B. 2. C. 9. S. 26, &c. C. 49. S. 10, 11.

Where a Traverse may be taken on a Traverse, B. 1. C. 77. S. 3.

Treason.

Treason included in all Felony, B. 1. C. 25. S. 3.

What was High Treason at Common Law, B. 1. C. 17. S. 2.

What is so by 25 E. 3. B. 1. C. 17. S. 2.

Construction of 25 E. 3. as to the Persons who may be Guilty of it, (B. 1. C. 17. S.

An Alphabetical Index to both Books.

3.) as to the Words *Compass* and *Imagine*, &c. (B. 1. C. 17. S. 4.) as to the Words *our Lord the King*, (B. 1. C. 17. S. 5 to 11.) as to the Words, *My Lady his Queen, the King's Companion, their eldest Son and Heir*, (B. 1. C. 17. S. 11, 12, 13.) as to the Words *levy War against the King, in his Realm*, (B. 1. C. 17. S. 14 to 18.) as to the Words *Adhering to the King's Enemies, &c.* (B. 1. C. 17. S. 18.) as to the Words, and thereof be probably attainted of open Deed, B. 1. C. 17. S. 19 to 27.

Construction of 25 E. 3. as to *High Treason in Killing the King's Officers in the Administration of Justice*. (B. 1. C. 17. S. 27.) and in *Counterfeiting his Seal*, (B. 1. C. 17. S. 28.) or *Coin*, (B. 1. C. 17. S. 28 to 31) and in *bringing false Money into England*, (B. 1. C. 17. S. 32 to 36.

The Parliament to declare what other Cases amount to *Treason*, B. 1. C. 17. S. 36.

No Offence to be deemed *Treason* which is made such by any Statute since 25 E. 3. and prior to 1 Ma. B. 1. C. 17. S. 36.

High Treason in maintaining the Jurisdiction of the Bishop of Rome, (B. 1. C. 17. S. 37, 38.) in obtaining *Popish Bulls, &c.* and in giving or receiving *Absolution, &c.* (B. 1. C. 17. S. 39.) in reconciling or being reconciled to the *Romish Religion*, (B. 1. C. 17. S. 40.) in being *Ordained or Professed by Popish Authority*, (B. 1. C. 17. S. 41.) in not returning from a *Popish Seminary*, (B. 1. C. 17. S. 43.) in refusing a second *Tender of the Oaths*, (B. 1. C. 17. S. 44.) in denying the *Rightfulness of the Protestant*

An Alphabetical Index to both Books.

- Succession, or the Power of the Parliament to limit the Crown, B. 1. C. 17. S. 45.*
Where a Riot amounts to High Treason, B. 1. C. 17. S. 14, 15, 16. C. 65. S. 6.
The Jugment in Treason, B. 2. C. 48. S. 3.
Whether a Prosecution for Treason be barable by an Attainder of Felony, B. 2. C. 36. S. 4.
Whether Justices of Gaol-delivery have a Jurisdiction over Treason, B. 2. C. 6. S. 2. C. 7. S. 2.
Whether the Torn have such Jurisdiction, B. 2. C. 10. S. 24.
Power of Justices of Peace, as to Treason, B. 2. C. 8. S. 20.
Whether it be bailable, B. 2. C. 15. S. 24.
Whether the Franchise of a Sanctuary extend to it, B. 2. C. 32. S. 4.
Who may make a Commitment for Treason, B. 2. C. 8. S. 20. C. 16. S. 2.
Whether there can be Accessaries in Treason, see Accessaries.
Treason on the Sea, or beyond Sea, &c. where triable, see Sea and Foreign.
What Number of Witnesses is necessary on an Indictment or Trial of Treason, B. 2. C. 25. S. 81, &c. C. 46. S. 2.
What a good Pardon of Treason, B. 2. C. 37. S. 12, 21, see Pardon.
Whether the Prisoner shall have Counsel, or a Copy of the Indictment, B. 2. C. 39.
What to be done with one who stands mute on a Charge of Treason, B. 2. C. 30. S. 4, 5.
Whether it be sufficient to prove any one Overt-Act, and what is good Proof of such Overt-Act, B. 2. C. 46. S. 27, 28.

What

An Alphabetical Index to both Books.

What is forfeited by High Treason, see Forfeiture, B. 2. C. 49.

Whether Indictments for it removed into the King's Bench, may be remanded, B. 2. C. 3. S. 4.

Treasure-Trove, B. 1. C. 33. S. 14. B. 2. C. 9. S. 17.

Trespass.

An Acquittal or Conviction, &c. of Trespass, bars not an Indictment of Larceny, B. 2. C. 35. S. 5. C. 36. S. 5.

To what Crimes the Pardon of all Trespasses shall extend, B. 2. C. 37. S. 22, 23.

What is to be done where on an Indictment of Felony, the Fact amounts but to Trespass, & e converso, B. 2. C. 47. S. 4.

Force is implied in every Trespass, B. 1. C. 38. S. 3. C. 64. S. 13.

What Offences are included under the Word Trespasses, in the Commission for the Peace, B. 2. C. 8. S. 22.

Trial.

Trial by Peers, B. 2. C. 44.

Trial by Battel, B. 2. C. 45.

At what Time one may demand to be tried for Treason or Felony, B. 2. C. 15. S. 11.

How to be tried whether a Prisoner stands mute of Malice, B. 2. C. 30. S. 2.

Where a Trial may be set aside, B. 2. C. 47. S. 7.

An Alphabetical Index to both Books;
*Construction of 1 & 2 Ph. & M. which orders
that all Trials of Treason shall be accor-
ding to the Common Law, B. 2. C. 25. S.
84 to 89.*

Trust. See Use.

*Land given in Trust for the Highways, how
to be ordered, B. 1. C. 76. S. 15.*

Truth.

*No Justification of a Libel, B. 1. C. 73.
S. 5.*

Tything, B. 2. C. 10. S. 1.

V *Anquishment, B. 2. C. 23. S. 84. C. 24.
S. 9. C. 35. S. 6.*

Variance. See Evidence and Recital.

*A Variance between a Record of Conviction
and a subsequent Indictment or Pardon,
how helped by Averments, &c. B. 2. C. 35.
S. 3, 4. C. 37. S. 45.*

*What such a Variance between a Certiorari and
the Record intended, as prevents the Remo-
val of it, B. 2. C. 27. S. 46 to 51.*

*What such a Variance between the Command
and Felony committed, as saveth the Com-
mander from being an Accessory, B. 2. C.
29. S. 12, 13.*

What

An Alphabetical Index to both Books.

What Variance between the Indictment, &c. and Evidence, is material, and what immaterial, B. 2. C. 46. S. 24 to 35.

Venditioni exponas, B. 2. C. 27. S. 36.

Venire Facias.

Where the first Process, B. 2. C. 27. S. 4.

A Venire for a Jury, how to be returnable, B. 2. C. 41. S. 4, 5, 6.

Where it shall be joint, and where several, B. 2. C. 41. S. 7.

Venue. See Visne.

No certain Place needs be laid in an Indictment of Barratry, B. 1. C. 81. S. 4.

No Venue necessary for a Non-sealance, (B. 1. C. 10. S. 2.) or for the Place where the Facts happened, which bring a Man within the Prohibition of a Statute, B. 2. C. 25. S. 52, 71.

But generally a good Venue must be laid, B. 2. C. 23. S. 60, 61. C. 25. S. 51, 52.

What a good Venue, B. 2. C. 23. S. 60, 61.

Verdict.

Whether a Jury can be discharged before they have given their Verdict, B. 2. C. 47. S. 1.

Whether, and in what Manner, they may find a Man Guilty of Manslaughter, or Homicide, se defendendo, &c. on an Indictment of Murder, C. 47. S. 3.

What Verdict they shall give where the Indictment is for Felony, and the Evidence amounts

An Alphabetical Index to both Books.

- amounts but to Trespasses, & e converso, B. 2. C. 47. S. 4.
- Where the Acquittal of some of the Defendants, is the Acquittal of all, B. 2. C. 47. S. 5.
- Where a Verdict may find a Defendant Guilty for Part, or find some Defendants Guilty, and acquit others, B. 2. C. 47. S. 5. C. 26. S. 52.
- How far Jurors may be controlled by the Court in criminal Cases, B. 2. C. 47. S. 7.
- Where a Verdict against a Man in one Cause, estops him from pleading Not guilty in another, B. 2. C. 38. S. 3.
- Where impossible Matter found in a Verdict, shall be rejected, B. 1. C. 30. S. 4.
- Whether there may be a Nonsuit after a Verdict, B. 2. C. 23. S. 63.
- Where one may be put to answer, as for Felony, in Respect of a Verdict, finding him Guilty in an Action, B. 2. C. 25. S. 6.

Verge.

- Felonies within the Verge of the Court, how inquirable, B. 2. C. 9. S. 8, 9.
- Offenders within the Verge, standing mute, &c. shall have the same Judgment as if they were found Guilty, B. 2. C. 30. S. 5.

Victual and Victualler. See Imbezilment.

- Officers in Towns not to be Victuallers, B. 1. C. 78. S. 4. C. 80. S. 3.
- Victuals to be sold at reasonable Rates, B. 1. C. 78. S. 5.

The

An Alphabetical Index to both Books.

The Prices to be set by the Officers of State,
B. 1. C. 78. S. 3.

*Conspiracy to raise the Price of Victuals, how
punished,* B. 1. C. 80. S. 4.

*None but Victuallers or Innholders, to retail
Butter or Cheese,* B. 1. C. 80. S. 5.

*What is a Victual within the Statute against
Forestalling, &c.* B. 1. C. 80. S. 10, 24.

Alehouses how to be suppressed and licensed, &c.
B. 1. C. 78. S. 6 to 11. and S. 14, see
Alehouse.

Vi & Armis.

Whether necessary in an Indictment, B. 1. C.
64. S. 26. C. 76. S. 61. B. 2. C. 25. S.
57.

*Not necessary in a Scire facias, on a Recogni-
sance for the Peace,* B. 1. C. 60. S. 13.

View.

*Whether a Coroner can take an Inquest of
Death, without a View of the Body,* B. 2.
C. 9. S. 10.

Vill.

*Every Place generally alledged, shall be intend-
ed to be a Vill,* B. 2. C. 23. S. 60.

Villanous Judgment, B. 1. C. 72. S. 7.

Violence.

An Alphabetical Index to both Books.

Violence.

What such Violence as makes a felonious Taking, amount to Robbery, B. 1. C. 34. S. 5, 7, 8.

What Violence makes an Assembly riotous, B. 1. C. 65. S. 4.

What Violence makes an Entry Forcible, B. 1. C. 64. S. 13.

Visne. See Venue.

Under-Sheriff.

Where he may execute a Writ directed to the Sheriff, B. 1. C. 63. S. 6.

Unknown. See Known.

Void and Voidable.

Where an Act may be void, as to some Persons and not to others, B. 1. C. 8. S. 3.

An erroneous Attainder or Outlawry are not void but voidable only, B. 2. C. 29. S. 22. C. 36. S. 2. C. 48. S. 17. C. 27. S. 62.

But a Judgment given by Persons who had no Commission is void, B. 2. C. 9. S. 8. C. 50. S. 2.

Usage.

Where it changes the Signification of Words, B. 2. C. 9. S. 2, 5.

Use

An Alphabetical Index to both Books.

Use.

Whether an Use can be forfeited for Treason,
 &c. B. 2. C. 49. S. 3, 15, 16, 17.

The Use of a Freehold is sufficient for a Ju-
 ror, B. 2. C. 43. S. 8, 11.

Usury.

What is Usury, B. 1. C. 82. S. 1, 4, &c.

Whether unlawful at Law, B. 1. C. 82. S.
 2, 3.

How prohibited by Statute, and how the Sta-
 tute is to be proceeded on, B. 1. C. 82. S. 4.

The Statute, how pleaded, B. 1. C. 82. S. 14,
 15.

Evidence on it, B. 1. C. 82. S. 16, 17.

Whether it be indictable at the Torn, B. 2. C.
 10. S. 26.

Whether an Indictment for it must shew how
 much was taken, B. 2. C. 25. S. 69.

Whether one who has borrowed Money on Usury,
 may be a Witness to prove it, B. 2. C. 46.
 S. 19.

Wager of Law.

W *Hether it lie in a Qui tam, B. 2. C.*
 26. S. 43.

Wages.

An Alphabetical Index to both Books,

Wages.

Conspiracy to raise them, how punished, B. 1. C. 80. S. 4.

Waggons.

By how many Horses to be drawn, and of what Breadth their Wheels must be, B. 1. C. 76. S. 38, 39, 40, 41.

Waif, B. 2. C. 49. S. 14.

Whether Waifs be inquirable in the Torn, B. 2. C. 10. S. 25.

Waiver of a Pardon, B. 2. C. 37. S. 41, 46.

Wales.

Counterfeiters of Coin and Felons in Wales, where indictable, &c. B. 1. C. 31. S. 4. B. 2. C. 25. S. 27, 28.

Whether a Certiorari shall go to Wales, B. 2. C. 27. S. 11.

An Acquittal of Murder in Wales, is pleadable in England, B. 2. C. 25. S. 28.

War. See Treason.

Warrant. See Parol and Arrest.

Warrant by a Justice of Peace, in what Form to be made, B. 1. C. 60. S. 6. B. 2. C. 13. S. 11.

An Alphabetical Index to both Books.

In what Manner, and by whom to be executed, B. 1. C. 60. S. 7, 8, 9. B. 2. C. 13. S. 11, 12.

It will not make good an Arrest, made before it was granted, B. 2. C. 13. S. 7.

Whether a Distress in the Leet may be distrained for, without Special Warrant, B. 2. C. 10. S. 11.

What Arrests are lawful without any Warrant from a Justice of Peace, &c. see Arrest and Constable.

Where a Warrant from a Justice of Peace, is necessary, and where it is a good Justification, B. 2. C. 13. S. 7, 8.

Where a Warrant to take a Man will justify opening Doors, B. 2. C. 14.

Whether a Distress for a Fine in the Tonnage may be justified without Special Warrant, B. 2. C. 10. S. 11.

Waste.

Whether the King shall have the Waste of Felon's Lands, B. 2. C. 49. S. 6.

Watch and Watchmen.

Watch how to be kept, and the Power of the Watchmen, B. 2. C. 13. S. 1, 2, 3, 4.

Where it is Murder to Kill a Watchman, see Peace-Officer.

Way. See Highway.

What a Footway, what a Primeway, and what a Highway, B. 1. C. 76.

Weapon

An Alphabetical Index to both Books,

Weapon.

*What a Weapon drawn, B. 1. C. 30. S. 3.
How to be shewn in an Appeal, &c. B. 2. C.
23. S. 55.*

Whitehall.

*Whether Lodging in it be looked on as a Dwel-
ling-house, B. 2. C. 33. S. 60, 64.*

Wife. See Husband.

*How far excusable by Coertion or Command of
her Husband, or for being in his Company,
B. 1. C. 1. S. 6, 7, 8. C. 33. S. 12.*

*How far liable to be prosecuted without her
Husband, B. 1. C. 1. S. 8. C. 10. S. 18.
B. 2. C. 14, 23.*

*Whether a Conviction of the Wife be pleadable
to an Information against the Husband, B.
1. C. 10. S. 24.*

*Popish Wives, how punished, B. 1. C. 12. S.
19, 20, 21.*

*Where, and in what Manner, a Wife is to
find Sureties of the Peace, B. 1. C. 60 S.
2, 3.*

*Whether she may be Guilty of a Forcible Entry,
&c in Respect of a bare Command, B. 1. C.
64. S. 19.*

*Whether she be indictable as a Barretor, B.
1. C. 81. S. 2.*

*Whether she may bring an Appeal of her Hus-
band's Death, and what will bar her, B.
2. C. 23. S. 10, 20, 21.*

Whether

An Alphabetical Index to both Books.

Whether ſhe may bring an Appeal of Rape without her Husband, B. 2. C. 23. S. 36.

Whether Husband and Wife ſhall recover Damages for a malicious Appeal againſt the Wife, B. 2. C. 23. S. 95.

Whether her Place of Habitation be ſufficiently ſhewn by ſhewing that of the Husband, B. 2. C. 23. S. 74.

Whether ſhe becomes an Accessary to a Felony, for receiving her Husband, B. 2. C. 29. S. 19.

To whom the Profits of her Lands are forfeited by the Attainder of the Husband, B. 2. C. 49. S. 4.

Wine. See Taverns, Victual, and Foreſtalling.

Witch and Witchcraft, B. 1. C. 3.

Witness. See Evidence

The Offence of reſuſing to be a Witneſs for the King, B. 1. C. 22. S. 3.

Whether a Writ of Conſpiracy lie againſt a Witneſs, B. 1. C. 72. S. 3.

Inhabitants of a County may be Witneſſes in an Indictment for not repairing a Bridge in it, B. 1. C. 77. S. 4.

Where two Witneſſes are neceſſary, B. 2. C. 25. S. 81, &c. C. 46. S. 2.

Whether a Judge or Juror, (B. 2. C. 46. S. 14.) or an Accomplice, (B. 2. C. 46. S. 15.) or a Perſon infamous, B. 2. C. 46. S. 16, 17, 18.) or intereſted, (B. 2. C. 46. S. 19, 20.) or wanting Diſcretion, or an In-
Q fidel,

An Alphabetical Index to both Books.

*fdel, Alien, or Villein, B. 2. C. 46. S. 21.
can be Witnesses.*

Woman.

The Offence of ravishing a Woman, or marrying her Forcibly, see Force and Rape.

Whether a Woman shall have the Benefit of the Clergy, B. 2. C. 33. S. 3, 4.

How to be tried whether Quick, when she pleads her Belly, B. 2. C. 51. S. 8.

Whether punishable as a Rioter, B. 1. C. 65. S. 13.

Not bound to assist in suppressing a Riot, B. 1. C. 65. S. 18.

Nor to attend the Leet, B. 2. C. 10. S. 3.

Whether she may bring an Appeal, B. 2. C. 23. S. 15, 19, 20, 21.

Cannot be an Approver, B. 2. C. 24. S. 2.

What shall be done with a Woman standing mute, B. 2. C. 30. S. 6.

The Judgment against a Woman for Treason or Felony, B. 2. C. 48. S. 3, 4.

Wool.

Stealing it from Tenters, excluded from Clergy, B. 2. C. 33. S. 42.

Transportation of it, how punishable, B. 1. C. 52.

Imbezillers of it, to be whipped, B. 1. C. 33. S. 5.

An Alphabetical Index to both Books.

Words.

Whether any Words amount to an Overt-Act of High Treason, B. 1. C. 17. S. 20 to 27.

Whether they forfeit a Recognisance for the Peace, or Good Behaviour, B. 1. C. 60. S. 14, 15. C. 61. S. 2, 3.

Whether they can amount to an Assault or an Affray, B. 1. C. 62. S. 1. C. 63. S. 1.

Whether they can make an Entry Forcible, or an Assembly Riotous, B. 1. C. 64. S. 14. C. 65. S. 5.

Wound.

All Persons are bound to arrest one who gives a dangerous Wound, B. 1. C. 63. S. 9. B. 2. C. 12. S. 1.

Whether it be safe to bail such Offender, B. 1. C. 63. S. 13.

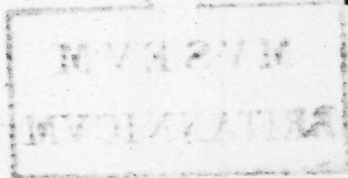
Whether Doors may be broken open to take him, B. 2. C. 14. S. 1.

Where the Wounding another may be justified or excused, B. 1. C. 60. S. 15, 16. C. 63. S. 9. C. 65. S. 19.

Writ.

Whether Justices of Oyer, &c. may be by Writ, B. 2. C. 5. S. 2.

Writings.



An Alphabetical Index to both Books.

Writings.

No Felony to steal them, B. 1. C. 33. S.
14.

Tear.

How laid in Appeal, B. 2. C. 23. S.
60.

Yeoman, B. 2. C. 23. S. 66, 72.

F I N I S.



A
S.

S.

S.

24